1912
L'Court

File No 312-12

D.C. Correspondence relating to the Sep
of Judicial & executive functions in the State.

App.F.IX-4

1912 courts

File No. 312-12

Previous References

~~Serial Nos.~~ Enclosures to file 312-12

Later references.

cls 160-42(1-3)

GENERAL AND REVENUE SECRETARIAT.

~~*Serial Nos.*~~ Enclosures.

Part B for

SUBJECT

D.O. correspondence relating to the separation of judicial and executive functions in the States.

6/5/26.

No. C. 322
5. 6. 13.

G.R.S. 11] 1912-13

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 312 of 1912-13.

FILE HEADING.

Separation of the judicial and Executive functions.

From

No. Dated Received

Diary No. Enclos. Spare Copies. Serial No.

BRIEF ABSTRACT OF LETTER.

Jrns 196-12
Flag V

NOTES AND ORDERS.

Dewan's order in Courts file 124 of 1912 empowering the Amildar of Maddagiri to take cognizance of Crl cases:

"This case may be disposed of as suggested by the 1st Cr in para 23. The general question which

2.7.0

NOTES—First Sheet.

GPB—30,000—12-8-11

R. S. 12]

General and Revenue Secretariat. | C5 File No. 312 of 1912-13

Serial No.

is one of considerable importance and which the 1st Cr has kindly promised to develop may be brought up at a council meeting or meetings till a definite decision is reached."

Flag A

2 Subd with C5 file 196 of 1908 in which the question of relieving the Amildars of their magisterial work has been discussed.

KG-129

26.5.1913

SM 27/5

Submd & orders

DY Secy) 27/5

1st Commr Alert) Dwan Angr Rao 27/5

3 Seen. The matter may be placed before the Meeting of Council as soon as it can be conveniently taken up.

30/5/13

4/6 Dwan 4/6

C5 4/6 SR 4/6

4 Subd. May this be sent to the

P.T.O.

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

05 File No. 312 of 1912-13

Serial No.	
6	The subject was brought up before a meeting of Council held on 30th July 1913 and adjourned for want of time.
7	Brought up again at the meeting on the 9th August 1913, but was not taken up for want of time.
8	Brought up again at the meeting on the 20th August 1913; but was not taken up for want of time.
9	Brought up again at the meeting on the 10th September 1913, but was not taken up for want of time.
10	Placed before Council at the meeting on the 18th inst.
11	The Secretary to the Govt. of India in the Dept. of Revenue & Agriculture under the direction of the Hon'ble Member, giving briefly the previous history of the question & stating definite proposals for the Separation of Judl. & Executive functions with the

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

(52/53)

R. S. 12]

General and Revenue Secretariat.	C5 File No. 312 of 1912-13
Serial No.	
	Approximate cost & Saving Effect in the proposals

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Separation of Judicial from Executive.

Previous hist.

13 At the Representative Assembly of 1906, it was represented that, as a step towards the separation of Judicial from Executive functions, the Taluk Amildars might be divested of their magisterial functions and Sub-Registrars entrusted with the same. The question was considered in its various aspects by Govt and after consulting the Chief Court and the Rev. Comr, it was ordered in G.O. No 1187-1227/ dt 196-06 & 13-10-07, that, as an experimental measure, the Amildars of Bangalore, Mysore, Kolar, Maddagiri, Hole-Narasipur, Sagar and Hassan be divested of the power to take Cognisance of offences under sec 190, Cr. P. C, the magisterial work in the Bangalore and Mysore Taluks being entrusted to the City Magistrates there and in the other taluks to the Munsiffs at the respective places, whose Civil files were stated to be not heavy.

14

2. Subsequently, however, the Amildars at the places referred to above were, one by one, reentrusted with magisterial work, so that at present not one of those Amildars is ~~completely~~ free from magl. work The reasons that led to this reversal of policy ~~are~~ in each case are given briefly below :-

	Taluk.	Reasons for entrusting the Amildar with Magl work.
flag Y	Kolar Cls. 7. 267* - 10 - 1&2	Unsatisfactory nature of the magisterial work turned out by the Munsiff at the time.
flag X	2. Muddagiri Cls. 7. 124-12-1 to 3	Delay in the disposal of magistl work by the Munsiff.
flags W Y	3. Hassan. Cls 270-09-1 2 and Cls 25-11-1 to 3.	Need of relief to the Munsiff, owing to heavy civil work
flag U	4. Sagar Cls. 7. 247-12-1 2.	Do -
* Not available.	5. Hole Narasipur * Cls. 123-12.	Do -
* Not available	6. Bangalore. * L.R. 21-11-1 to 5.	At the time of reconstituting the Sub Divisions of the Bangalore D. so as to reduce their number by one, it was found necessary to reentrust the Amildar with magisterial work.

7. Mysore

Flags T & S

cts. 287-08-1 to 8 and cts 214-10-1 to 5.

For the satisfactory enforcement of the provisions of the village Sanitation Regn, the Amildar has been empowered to try cases under that Regn. Further, the District Magte Mysore, has been authorised to refer cases specially to the Amildar.

15 3. It is seen from the above that in no case was the reversal of policy due to the experiment itself having proved a failure. It was due either to the inability of individual officers to cope with the work or to pressure of civil work in the case of some munsiffs, or to administrative necessity. The experiment was not tried for sufficiently long time in any place to judge of its success or otherwise.

16 4. For the experiment to be tried on a sufficiently comprehensive scale, it seems to be necessary to employ additional officers. In Baroda, the magisterial work of vahivatdars (revenue officers) has been entrusted to munsiffs. The chief difficulty in entrusting the

Vide para 2 of Sl 3 of cts 196-06

work to Munsiffs in this Province appears to be that their civil work will get much distracted by unexpected criminal cases which can not be postponed and that arrangements will have to be made for magisterial work during the recess of Civil Courts. The System of Stationary Sub Magtes is stated to have not been working satisfactorily in the Madras Presidency.

Opinion of Mr. H. V. Nanjundaiya vide Sl 5 of Cts 196-06.

Flag Z

07 and Cts 62-09.

Flag

Opinion of Mr. Chandrasekhara Iyer. vide Sl 5 of Cts 196-06.

Flag Z

17)

Mr. Justice Wallace has opined that any scheme which will result in a speedier disposal of cases civil & criminal is better than any theoretical advantage gained by the Separation of Judicial from executive.

vide para 11 on page 5 of the Office Notes in Cts 124-12.

Flag P

SUBJECT No. 32.

The separation of judicial and executive functions of Amildars.

Messrs. (1) S. R. Balakrishna Rao, (2) K. Sankaranarayana Rao, Shimoga Municipality, C. Vasudeva Rao, Chikmagalur taluk, (3) Yagayyana Krishnappa, Sagar Taluk and (4) M. Venkoba Rao, Hole-Narsipur Municipality.

Summary of discussion.—(1) In places where Munsiffs' Courts are located, Taluk Amildars may be divested of their magisterial functions to enable them to attend better to their other multifarious duties. In British India stationary Magistrates are appointed although the Tasildars are not saddled with the multifarious duties of our Amildars and thus the principle of separating the judicial and executive functions is being gradually effected in British India.

(2) To enable the Amildars to exercise effective supervision over the taluk police and to attend to the revenue, sanitation and other duties properly, it is desirable to relieve them of their magisterial functions. Much inconvenience is felt at present by the parties owing to the frequent adjournments of criminal cases necessitated by the absence of the Amildars from headquarters.

Per contra.—(3) The disposal of civil suits has become very slow in places where Munsiffs are saddled with magisterial work. Amildars may therefore be re-invested with magisterial work in such places, as by this arrangement revenue work will not suffer in any way.

The Munsiffs who are at present saddled with magisterial work may be relieved of it and some other magistrates may be appointed to dispose of it.

(4) If the Amildars who frequently tour in villages are invested with magisterial powers, they can find out the truth of complaints, bring the offenders to justice and prevent the stealthy flaying of cattle, etc.

Reply of Government.—Noted. There are practical difficulties in carrying out the suggestions.

(18) The general question of separating the judicial and executive functions has been again engaging the attention of Govt. Ct's file 312 of 1912-13, in which it has been taken up, was ordered by the Dewan to be brought up at a Council Meeting. This file also be sent to the Council Sec", if approved, for being ~~placed before the Council~~ put up with that file for consideration

Submd.

19) Yes. Sd/-

Council Section 21/7

HG.-129
19.7.13.-SN

SUBJECT No. 33.

Separation of judicial from the executive.

(1) Messrs. C. Krishnamurti, Law Association, Bangalore, H. K. Veerabasaviah, Lingayet Education Fund Association, Bangalore, Dhalappa, Ramaswamiengar and Narasimiah, Anekal taluk; B. Narasinga Rao, Seringapatam taluk; Padmanna and K. Venkatasamaiya, Nanjangud taluk; and C. Vasudeva Rao, Chikmagalur taluk.

(2) Messrs. Mohamed Raza and S. Ramanna, Hassan municipality, H. V. Rangaswami, Hassan taluk, and S. Venkatesayya, Hassan District Agricultural and Industrial Association.

(3) Mr. S. R. Balakrishna Rao, Shimoga municipality.

(4) Messrs. Shankaranarayana Rao, Nagar Sabha, and B. Venkatasamanna, Chitaldrug municipality.

Summary of discussion.—(1) The judicial (criminal) and the executive functions deserve to be separated. The question of cost cannot stand close examination, for the cost involved may be minimized by investing Munsiffs with magisterial powers wherever possible. Even if the cost involved be of some magnitude, it is nothing compared with the boon that it brings to the public and the extent to which it goes to purify the administration of justice. As a preliminary step in this direction, the Amildars may be divested of their magisterial powers. This prayer has been urged for a long time and the sooner it is granted the better.

(2) It is prayed that the separation of the executive and the judicial service in the State be placed on some definite footing.

The policy of separation of the functions already initiated by Government as necessary and desirable may be continued and developed in a sympathetic spirit.

(3) A beginning may be made in this direction by appointing stationary magistrates for groups of two or three taluks divesting at the same time the Amildars of these taluks of their magisterial powers. Assistant Commissioners of less than 10 years' standing ought not to be invested with first class magisterial powers.

(4) The Amildars cannot find sufficient time to attend to the magisterial work on account of heavy work in the Revenue, Police, Excise, Sanitary and other departments and parties are put to much inconvenience on account of frequent adjournments of criminal cases. It is therefore prayed that steps may be taken to divest the Amildars of their magisterial powers and appoint stationary magistrates to attend to criminal work.

Mr. C. Krishnamurti.—This is an old question. The experiment was tried in certain places but has recently been abandoned. One suggestion is that appeals from 2nd and 3rd Class Magistrates should go to Munsiffs and Sub-Judges.

1st Councillor.—In that case, how will the District Magistrate exercise control?

Mr. H. K. Veerabasaviah suggested that the Amildars should at least be divested of police powers.

1st Councillor said that this was considered carefully, but was not accepted by Government.

Reply of Government.—The general question is under the consideration of Government.

(1) This is one of the old representations that has been repeated in the year 1914 also. The subject was discussed at great length at the last Joint Conference where resolutions are now before Govt.

J. R. S. 12]
General and Revenue Secretariat.

File No. 314 of 1912-13

Serial No.

21 The previous history of the experiment that was tried in six of the places and the experience of the workers thereof is contained in the note flagged K

22 How and on what lines the reparation thereof be brought about, if Govt are inclined to effect the same, is a matter for consideration

23 Subº for order.

KG. 16
15/9/1914 MM

May this be ordered this am in person present?

First Member

25 What else can we do

16/9/14

17/9

MM
15/9

RE— Contn. sheet.

SUBJECT No. 16.

Separation of Judicial from Executive functions.

Messrs. Suryanarayana Rao, Tumkur taluk, and Ramanujiengar, Gubbi taluk, B. Narasinga Rao, Seringapatam taluk, and N. Bheema Rao, Chitaldrug municipality

Summary of discussion.—The Revenue and the Criminal functions have been vested in one and the same officer. It is feared that this arrangement not only causes much inconvenience to parties but also prevents them from obtaining justice. Criminal work may therefore be separated from Revenue functions.

As the Amildars cannot, amidst their multifarious duties, satisfactorily discharge their magisterial work, Stationary Magistrates may be appointed for the purpose and to these may be assigned any other additional work, if necessary, or the number of Munsiffs may be increased and they may be put in charge of both the civil and criminal work of two taluks.

Mr. B. Narasinga Rao added that the cost involved in the proposal would not be prohibitive as it might come up only to Rs. 50,000 which could be reduced if necessary.

Reply of Government.—Noted. This is mainly a question of funds.

General and Revenue Secretariat.

G.O. File No. 203 of 1914-15

Seria No.

Read 15/1/915

10. That this Conference recommends that the Government of His Highness the Maharaja be pleased to effect complete separation of judicial from executive functions.

W.O. J. 48-14

To forwarded unofficially to the Registrar Chief Court, for favour of obtaining the opinion of the Judges of the Chief Court on the above resolution of the Judicial Conference of 1914.

By order
S. Srinivasa Iyer
for CHS: Secy to Govt

11th Jan 1915.

Opinion of the Chief Court

3243/201 dy 27.1.15.

The Chief Judge

17/1/15 27 If this could be done I do not suppose any judge would oppose it. But unless I know that the Government is ready to consider favourably any scheme for effecting the object of the proposal, I do not think it is worth while trying to formulate one. The main objection I presume is financial.

Mr. Justice K. S. Chandrasekhara Aiyar

22/1/15 28 I have nothing to add to the Chief Judge's observations.

NOTE—Contn. sheet.

GPB—25,000—2-11-14

G. R. S. 12]

General and Revenue Secretariat. | C.C. File No. 312. of 1912-

Serial No.	
221/18	Mr. Justice T. Paramasiva Iyer I quite agree. If Government can spare a couple of lakhs this 'counsel of perfection' can be easily carried out. I am dead against the system of Stationary Sub Magistrates as it obtains in Madras, a hundred-rupee second-class Magistrate in a flourishing tract being generally corrupt. 24th January 1915. B A N G A L O R E . H. Krishnan R E G I S T R A R AA Accepted

-Contn. sheet.

GPB—25,000—2-11-14

SHA 16-14

G. R. S. 12.]
General and Revenue Secretariat.

CS File No. 312 of 1912-13

Serial No.

30 The previous history of the experiment that was tried in six of the places and the reasons that led to the magisterial work being restored to the Amlahs are contained in pages 6 to 9 of these notes.

31. Orders have to be passed on the representation on this subject made in the Assemblies of 1912, 13 & 14 as also on the Bakshais of the years (copies 10.7.13 attached) on the subject on which the opinion of the Chief Court has been obtained.

KG.
14.4.15

32) May this be taken up along with the question as proposals for first member which are now under consideration of Govt.

SB 14/4

Rd on 24.4.15

First Member) Yes

24/4/15

26/4

NOTE—Contn. sheet.

GPB—25,000—22-3-15

G. R. S. 12]

General and Revenue Secretariat.

As File No. 312 of 1912.

Serial No.

Separation of Judicial from Executive functions

I Twelve officers of Govt were Consulted

The Chief Judge Considers that the Scheme is a good one which the Govt would be well advised to adopt.

The Rev Commr, The I.G. of Police and the Dy Commrs are Speaking Generally against the Scheme. ~~A brief~~ analysis of their opinions is given below:—

Rev Commr — If the proposed Scheme is adopted, Criminal Justice will become as dilatory and Costly as Civil Justice. It would involve a good deal of travelling for the parties, witnesses and the Police. If it is necessary to divest the Amildar of either his police or Magisterial functions he may be divested of the Police functions. He must Continue as a Magistrate as he will be much safer than a Sub Magistrate. There is no reason to deprive Dy Commrs and Asst Commrs of their Magisterial functions.

I. G. of Police — Even the existing Magisterial Courts are not enough to meet wants as they are at a great distance from Villages and no further reduction, as the Scheme Contemplates

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

No. File No. 312 of 1912.

Serial No.

is possible - The worry and annoyance due to long journeys, frequent adjournments, long absence of the villagers from their homes and interruption of their work, Expenses &c would outweigh the somewhat problematical advantages sought to be achieved

Mr Chandy — Several Asst Commrs and more than half the Muldars will not have sufficient work if they are not Magistrates. The Muldar's prestige will suffer. It would not be in the interests of things if a Separate agency on a Salary of Rs 200 - 400 is created for doing a portion of the work which the Muldars are now turning out on a Salary of Rs 150 to Rs 250. The posts of Tehsildars Mr Chandy Magistrates Bangalore and Mysore, and Special Magistrate, K. G. F. Cannot be abolished

Mr Chandy is in sympathy with the idea of separation and has given a Scheme of his own.

Mr A. Subrahmanyam — There is no need to deprive Asst Commrs of Magisterial

Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat. | No. File No. 212 of 1912.

Serial No.

powers. As the trial of Cr Cases does not leave enough time for the other duties of Amildars, they may be divested of Magisterial functions. The Ministers of the Sirmadis &c may be invested with Magisterial functions

The Chief Judge is not in favour

Mr K. Krishnaiyer — There is no reason to deprive Asst Commrs of Magisterial powers. Eight first class Magistrates cannot cope with the first class work of the whole State. Not more than 4 second class Magistrates be sufficient. Two Talukas may be combined and one Amildar placed in charge of the Police and the Rev work and the other in charge of the Magisterial work of the Combined Talukas. Or in the alternative Amildars may be divested of their police functions.

Mr Bascomp — Eight First Class Magistrates and fourteen Second Class Magistrates would be totally unable to get through the work. Parties and witnesses would be put to much inconvenience in large Districts

Mr Matthan — At present 18 officers are

NOTE—Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

No. File No. 342 of 1912.

Serial No.	
	Hearing Magisterial functions in the Mysore Dt. It is impossible for one First Class Magistrate and two Second Class Magistrate – the number proposed in the draft Scheme – to do the work of these 18 officers. Assuming that Govt have decided to carry out a Separation Mr Matthew thinks three first class and four Second Class full time Magistrates for the Mysore Dt would be necessary. If there is only one First Class Magistrate in a Dt there will be no officer in the Dt to whom a case may be transferred from his file, when Objection arises.
	Mr B. Ramasamma – Under the proposed Scheme, Asst Commrs and Amildars will find considerable relief, but the number of Magistrates is not enough and there will be public inconvenience – Separate Court buildings will be required but their Cost has not been taken into Account in the draft Scheme. The proposed First Class Magistrates will lack the necessary Experience and Qualifications required for

NOTE—Contn. sheet.

G.P.B.—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

File No. 312 of 1912.

Serial No.

The Inspector Posts of letter Dy Commr &
Dt Judge.

Mr Balasundaram Iyer has touched on most of the points referred to above - A full time Prosecuting Inspector will have to be appointed for each Court. If the proposed 2nd Class Magistrates are given 200-400 Amildars will fall in the estimation of the public. Asst Commrs may be first class Magistrates. There may be a Second Class Magistrate for two Talukas. The proposed Magistracy should be recruited from Amildars also and not confined to Munsiffs alone

Mr K. R. Sreenivasa Iyer - has also referred to almost every objection referred to above. He says that even the Leg. Assembly members want only a Separation of Magisterial from police functions not a Separation of Judl from Executive functions. Amildars may be deprived of their police functions and ~~the other matters~~ consequential

NOTE—Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

No. File No. 312 of 1912.

Serial No.

Changes made. If they cannot be deprived of their police functions and record & class Magistrate they be appointed for two Talukas.

The D. G of Registration says that the Sub Registrars who are low paid should not be made independent Magistrates. They may be appointed to benches of Magistrates, wherever their Registration work permits it.

II Non-official opinion

The Madras Mail

Twelve non-official gentlemen were consulted. Generally speaking they are in favour of the Scheme.

Messrs A. Ramanna, M. C. Rangaya and B. Narasimha Rao think that the Scheme does not go far enough. They would vest Sub Judges with the powers of a Dt. Magistrate, but Mr Rama Krishna Murti says that Dt Collectors must continue as Dt Magistrates to carry on the Dt administration effectually and efficiently. Mr Basavaya also thinks

Messrs A. Ramanna
S. R. Balakrishna Rao
K. Sankaranarayana Rao
M. Dr. Basavaya
B. Narasimha Rao
B. K. Sundaracha
Malai Krishna Murti
C. Sreeramulu Reddi
M. Venkatakrishnayya
S. Venkatesayya
Ramachandra Rao Sahib
& M. C. Rangaya

NOTE—Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

do File No. 312 of 1912.

Serial No.

that Dy Comrs may Continue as Dt Magistrates

Mr B. K. Sayeda Clear thinks that no Case has been made out for denuding Sub Dy officers and Dy Asst Comrs of their Magisterial functions or for creating eight Lengthy paid First Class Magistrates. Amildars may be deprived of their Magisterial functions; and for 2 Class Magistrates a pay of Rs 150-10-250 would be enough.

Mr Basavya is of opinion that Dy Asst Comrs may Exercise first class powers only that even after the creation of a separate agency for the trial of Cr Cases Amildars should be third class Magistrates, as otherwise their prestige and Consequently Int work will suffer He also thinks that instead of appointing eight Special first Class Magistrates on a high pay eight Asst Comrs may be appointed on 250-50-450. There may be a Special Second Class Magistrate for every Two Talukas

NOTE—Contn. sheet.

GPB—70.000—17-12-15

C. S. 194

G. R. S. 12]

General and Revenue Secretariat. | No File No. 312 of 1912.

Serial No.

Several of the non-official Gentlemen are agreed in thinking that when after a Separation Sub-Divisional Officers and Amildars may be vested with the powers under Chapters 8 to 12 of the Bo. Pr. Code which are of an executive character and also the power of granting remands.

RJ

The question may be considered at a meeting of the Council, if approved.

The Fin. Secy. may be consulted afterwards if the Council consider that there is a prima facie chance of accepting the scheme.

Dy. Secy. to Govt. 28/10

First Member & Dewan

Read 30.10.16

2636 9.4.17

I have studied this file and am now able to place my views before the Council at their next meeting. In the meantime, this file may be circulated to other members.

RJ

9/4/17

Point Frames done 9/4

Civil Secy. Dewan

Dy. Secy. to Govt. 9/4

5814 9.4.17

The file may be circulated as suggested. C. S. of 1914

18.4.17 RJ

NOTE—Contn. sheet.

No. C. 278/17

(For disposal at the next meeting) 20.4.1917

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

(Clause viii and x of the Schedule)

Proposals for the separation of judicial from executive functions.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

S. Ramaswamy
Secretary to Government.

20th April 1917.

Extraordinary Member of Council. 27.4.17.

First Member of Council. Opinion recorded.

Second Member of Council. 21.4

WD 2012—GPB—1 000—9-2-16

Extract from the note by the Revenue Commissioner in Mysore on the Efficiency of Taluk Administration. forwarded with the Govt Letter No Ae 1488/3 R 6/8/17

2 Every Taluk should have a Peshkar in view of the amazing increase of work that has accrued. He may be invested with 3rd class magisterial powers but the Amildar should be the 2nd class magistrate and should be empowered by a suitable amendment of the Code of Criminal Procedure to transfer 3rd class cases to the Peshkar. The Peshkar should not have power to take direct cognizance.

3. It is not desirable in my opinion to divest Amildars of their Police, magisterial and maramat work. In regard to their connection with the Police Department, I can unhesitatingly say that it is a great factor in ensuring ~~exact~~ fairplay and justice to the public. An Amildar's knowledge and estimate of the various classes and communities of his taluk and their varying temperaments are more extended than an Inspector's and further in his important functions of the Revenue officer and magistrate, he has a mind trained to higher thinking and is better able than a mere Police Officer to detect the weak points in a police man's theories of crime and the artificial links in the chain of evidence relied upon to support a given theory. The happy results of the inspector's subordination to the Amildar are evidenced every day by the considerable curtailment in the number of false cases going to the magistracy through the Police and in the speedier termination to the innocent accuseds' worries and anxieties. When there occurs a miscarriage of justice especially one resulting in the conviction of an innocent person the people lay the blame more readily upon the Amildar than upon the Inspector or Superintendent because of their belief that the good and the innocent are his special care and protection. With many honorable traditions attaching to his office and with his acknowledged position in the Taluk, the police interests of the State are best confided to his efficient yet sympathetic hands if those interests are to continue to be identical with the welfare and happy content of the good and loyal citizen. If the Amildar continues as the head of the taluk police, he need never try cases which he has investigated or has seen something of on the police side; and he does not. There are Assistant Commissioner Magistrates to take up those cases. The cases that an Amildar takes up for direct investigation are <u>very very few</u> for they

For sometime past what is popularly known as the question of " the separation of a Judicial from Executive Functions has been under discussion, in its various aspects among official and non-official gentlemen interested in it.

2. A proposal that has been made in certain quarters is to multiply the number of Munsiffs and make them Magistrates in addition. This is neither quite feasible nor expedient as it is apt to interfere with the disposal of Civil Cases. The fact that Munsiffs like other Civil Court Judges enjoy an annual vacation is a further reason for not tacking on Criminal work to them.

3. The following scale which has provisionally been prepared appears to be a workable one. Though it may not at once effect a complete separation it is expected to go far towards meeting the growing sentiment in favour of such separation and providing a wholetime agency for the trial of cases.

4. Deputy Commissioners will continue to be District Magistrates, as it will cause some inconvenience and dislocation of business if they are replaced entirely by a fresh set of officers. For the disposal of original criminal work now done by the Subordinate Magistracy, a separate agency may be provided, viz,

(i) 8 Special First Class Magistrates, one for each District, to be located at the District Head Quarters,

(ii) 19 Special Second Class Magistrates to be located at convenient centres, for the trial of second and third class cases

and

(iii) Benches of Magistrates may also be constituted wherever practicable to take part in the trial of second and third class cases; and on such Benches a place may be found for duly qualified Special Sub Registrars.

A suitable distribution of taluks among the special second class Magistrates has been suggested in the appendix to this note, with due reference to the statistics of the work of the various Magisterial Courts in the State during the past official year. This is intended to approximate equalisation of business, and, what is much more important, promote the convenience of the local population in regard to distance. The distribution suggested is a tentative one, and may be modified as experience may suggest. District Magistrates will no doubt be able to make the work of these Magistrates as nearly equal as practicable by a system of transfers of cases.

5. The above arrangement will allow of the withdrawal of Criminal work from all Assistant Commissioners and Taluk Officers

But Sub Divisional Officers may continue to be ex-officio First Class Magistrates exercising only the powers referred to in Chapters ~~xixxxixx~~ VIII to XII of the Criminal Procedure Code, which are essentially of an executive character.

6. Appeals against convictions by 2nd and 3rd Class Magistrates will be heard by District Magistrates or by the Special First Class Magistrate whenever they are transferred by District Magistrates to them.

7. The new staff of Special Magistrates should come along with Munsiffs, Sub Judges and District Judges form part of the Judicial service and kept distinct from other Departments. The appointments of Munsiffs and Sub Judges may however be interchangeable with those of the new Special Magistrates, in order that officers trained in both civil and criminal work may be ~~xxxixxxx~~available for promotion to higher appointments in the Judicial Department.

8. The total cost of the proposed scheme will be as shown below : -

Pay of 8 Special Magistrates of the 1st Class

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Submitted

A typed note containing extracts ~~from~~ of important portions of Mr. Chandrasekhara Iyer's note, properly arranged and adapted for the purpose in view, is ~~put up~~ attached.

The only material point that has been omitted is reference in paragraph 9 to question of recruitment to the new appointments proposed. The reason for the omission is that it may not be necessary to consider this point or invite opinions thereon at the present stage of the scheme.

The Financial Secy. has not yet been consulted in this matter

W. 10/10/16

N.B.—Should routine notes be written on small slips, the notes must be copied or slips pasted on this form.

GPB—50,000—5-8-15

Get a draft of the note as proposed & also a draft of the proposed Bill to give effect to the proposals

11/10/16

~~Government have had under consideration~~ for ~~for~~ some time past what is popularly known as the question of "the separation of Judicial from Executive functions." ~~They have discussed~~ has been under discussion. its various aspects among ~~with~~ official and non-official gentlemen interested in it, and listened to the views of local officers and others at the Conference of Deputy Commissioners at Mysore in June last, and of non-official members at the last meeting of the Legislative Council.

3 ~~2.~~ The full scheme which has been prepared ~~As a result a workable scheme is provisionally proposed which~~, though ~~it~~ may not at once effect a complete separation, ~~should~~ go far towards meeting the growing sentiment in favour of such separation, and ~~and at the same time conduce to a prompter and more efficient~~ administration of criminal justice by providing a whole-time agency for the trial of cases.

is effected to

2 ~~3.~~ ~~The general outline of the scheme under consideration may be shortly indicated:~~

4 ~~There is a strong feeling among local officers against depriving~~ Deputy Commissioners ~~of their functions as~~ will continue to be District Magistrates, ~~This feeling must, at any rate, for the present, be respected; especially~~ as ~~at~~ it will cause some inconvenience and dislocation of business if they are replaced entirely by

by a fresh set of officers. ~~They may therefore continue to be District Magistrates in virtue of their position as Deputy Commissioners.~~

For the disposal of original criminal work, now done by the Sub-Divisional Magistrates, ~~however,~~ a separate agency may be provided, namely -

(i) 8 Special First Class Magistrates, one for each District, to be located at the District Headquarters, ~~who will also help District Magistrates in disposing of appeals;~~ ~~and~~

(ii) 19 special Second Class Magistrates, to be located at convenient centres, for the trial of second and third class cases. and

(iii) Benches of Magistrates may also be constituted wherever practicable to take part in the trial of second and third class cases; and on such Benches a place may be found for duly qualified Special Sub Registrars.

~~Statistics~~ of the work of the various Magisterial Courts in the State during the past official year ~~have been obtained, and a~~ suitable distribution of taluks among the special Second Class Magistrates suggested ~~with a view to the~~ approximate equalization of business, and, what is much more important, ~~to~~ the convenience of the local population in regard to distance. ~~This however has been found to be not altogether an easy matter.~~ The distribution suggested is a tentative one, and may be modified as experience

(× Vide Appendix)

may suggest. District Magistrates will no doubt be able to make the work of these Magistrates as nearly equal as practicable by a system of transfers of cases.

5 ~~4~~. The above arrangement will allow of the withdrawal of criminal work from all Assistant Commissioners and Taluk Officers. But ~~for the sake of maintaining the prestige~~ the prestige of Sub Divisional officers ~~(a matter on which local officers lay much stress), they~~ may continue to be ex-officio First Class Magistrates exercising only the powers referred to in Chapters VIII to XII of the Criminal Procedure Code, which are essentially of an executive character.

2. ~~5.~~ ~~One alternative~~ proposal that has been made ~~suggested~~ in certain quarters is to multiply the number of Munsiffs and make them Magistrates in addition. This is neither quite feasible nor expedient as it is apt to interfere with the disposal of civil cases. The fact that Munsiffs like other Civil Court Judges enjoy an annual vacation is a further reason for not tacking on criminal work to them.

7 ~~6.~~ The new staff of Special Magistrates should, along with Munsiffs, Sub Judges and District Judges, form part of the Judicial Service and kept distinct from other Departments. The appointments of Munsiffs and Sub Judges may however be interchangeable with those of

8. By thus relieving subordinate executive officers of their criminal work it may be possible to effect a sensible reduction in the total number of Divisional Assistant Commissioners and of Amildars and Deputy Amildars, and the savings resulting therefrom may go far to set off the extra cost involved by the Scheme. The feasibility of these retrenchments depends however on other considerations not connected with the present question of separation of functions and requires further investigation.

9. In conclusion, Government desire to make it clear that they may not find it convenient to adopt the whole scheme at once, but may prefer to introduce it in a couple of districts to start with, extending it to the other districts later on if the experience gained warrants such a course.

G 74-9,

B. Narasinga Rao Esq

J. Venkatesaiya Esq

S 74-97

12.10.16

K. Diraswamy Iyer Esq, Revenue Comm

S. R. Balukrishna Rao Esq B.A. LL.B.

K. Krishna murti Rao Esq 12-10-16

~~B. Basavayya Esq B.A. B.L.~~

B. Narasinga Rao Esq

~~B. V. Gaundachar Esq~~

2 nos. { C. Srinivasa Rao Esq
M. Venkatakrishnaiya Esq

S. Venkatesaiya Esq B.A, B.L

Ramachandra Rao Scindhe Esq

A. Ramanna Esq

12-10-16

Letter No. S. 74-97

To

B. K. Gundachar Esq
Sitarilas Chattram,
Mysore

To

B. Basavayya Esq B.A.-B.L.
Advocate
Sarilas Chattram

Adv-V
Mys
Court
Mysore

12/10

G 74-97

12.10.16

Sir Leslie. J. C. Miller. Chief Judge

P. F. Bowring Esq
Deputy Commr, Kolar

P. Raghavendra Rao Esq B.a., B.L
Excise Commr
12.10.16

Dewan Bahadur
C. Sri Kanteevara Aiyar Esq BaBL
D.G. of Police

K. Chandy Esq, Dy. Commr, Bangalore

K. R. Srinivasiengar Esq M.a., Bangalore 12.6.16

K. Mathan Esq B.a., Mysore 12/6/16

B. Ramaswamayya Esq B.a. B.L.,
Kadur Dt 12/6/16

K. Krishna Iyer Esq Hassan Dt

A. Subrammya Iyer Esq B.a, Shimoga Dt

C. S. Balasundaram Iyer Esq B.a, 12/10/16
Chitaldrug.

M. C. Kangiengar Esq Advocate
Mysore

K. Shankaranarayana Rao Esq M.a
B.

Proposals made by Mr. Gokhale re Separation of Judl. & Executive functions, before the Welby Commission in April 1897.

"This year, in certain famine areas, Sub Judges are entrusted with Criminal work also to the relief of revenue officers and the experiment has so far succeeded very well. A similar experiment was tried during the famine of 1877 with equally satisfactory results.

The Stipendiary Sub Judges and Sub Magistrates may with advantage be relieved of a portion of their lighter work, by the appointment of Honry Magistrates and Arbitration Courts. Honry Magtes have already been appointed in the larger towns but benches of such Magtes may be constituted in Taluqa towns with great advantage to the Govt and the people. Further, the Caste & trade Panchayets may be utilised for settling civil disputes. Arbitration courts have already been recognised as cheap & efficient institutions for the administration of justice in small cases. If the same principle be extended to the Courts of Subordinate Judges and if Civil Juries are associated with Sub-Judges in the disposal of suits involving larger amounts of money as also in deciding questions regarding rights & customs, ample relief will be afforded to the Superior courts, which may ultimately enable considerable economies to be effected.

Scheme for the Separation of Judicial & cutive functions, laid before the Imperial Legl Council on 27-3-1906 by Sir H. Adamson. Main outlines.

1) Judicial & Executive functions to be entirely separated to the extent that a officer who is deputed for executive work shall do no judicial work and vice versa except for the short period when he is preparing for the departmental exams.

2) Officers of the I.C.S. to choose, after a fixed number of years service, either the judicial or executive line and to be thereafter employed solely on the line to which they have been allotted. Allotment to depend upon choice modified by actual Considerations

3) Officers of the Executive Branch of the Provincial Civil Service & members of Subordinate Civil Service also, if possible, to be subject to same conditions as (2)

4) Before choosing the career, officer to be gazetted to Comrs divisions & deputed to Executive or Judicial duties by Comrs order. During this period, deputation from executive to judl & vice versa to be made at intervals of not longer than 2 yrs.

5) High Courts to be freely consulted on questions of transfer & promotion of all officers who have been permanently allotted to the Judl Branch

6) Two Superior officers - Dt. Officer & Senior Magte - to be stationed at each Dt. Hd Quarters

7) Dt. officer to be executive head of the district and exercise the revenue & functions of the collector & the preventive magisterial powers now vested in Dt. Magte & to have control over police and discharge all miscellaneous Executive work.

(8) magisterial judl business of the district to be under the Senior magte who will be head of the magistracy and will (1) try important crl cases (2) hear appeals from 2nd & 3rd class magts (3) perform crl revision work and (4) inspect Magte Courts ~~of work~~ in cases where he has not full work he may be appointed an addl D. Judge & employed in civil work and ~~in~~ in particular cases inspection of civil courts; or ~~if~~ if it is inexpedient to give ~~any~~ him civil work on account of lack of experience, he may be appointed Asst Sessions Judge. In either capacity he will give relief to the D. & Session Judge.

i) At head quarters of districts where there are at present 4 civilians, Dy Magtes & Sub-Dy collectors, a certain number may be deputed to executive & the remainder to judl work.

ii) Sub Divisl boundaries to be rearranged and each district to be divided into judl Sub-Divns & Executive Sub-districts. The area of judl Sub Divisions is to be such as to give the officer in charge, a full day's work.

iii) The whole D. is thus divided into

~~A. Executive under the D. Officer.~~
~~(a) Head Quarters - D. Officer~~
~~(b) Sub-District - 3 civilians, Dy Collectors & Sub Dy Collectors~~

A. Executive
(a) Head Quarters
(b) Sub-District

B Judicial
(a) Head Quarters
(b) Sub Divisions

& the Staff is divided into -

A Executive, under D. Officer namely
(a) the D. Officer
(b) A certain no of 4 civilians, Dy Collectors & Sub Dy Collectors at Head Quarters
(c) An 4 civilian or Dy Collector for each Sub-D.

B. Judicial under the Senior magte, namely-

(a) the Senior magistrate

(b) a certain number of J-Curleans, Dy ~~Collectors~~ magtes & ~~Subs~~ Dy-magtes at Head Quarters

(c) An Indian civilian or Dy magte for each Sub Division

(12) the Dr officer to be empowered as a Dr magte and certain other executive officers to be empowered as 1st class magtes solely for the performance of the preventive functions of Ch VIII Cr. P.C (omitting Sec 106) to Chapter XII Cr. P.C.

Extracts from discussions in the Supr Legisl. Council on 7-3-1913.

1) Mr R. C. Dutt formulated a scheme for the separation of judicial & Executive functions in 1883 and it was his opinion that an addition of about 30 Dy Collectors ought to suffice for the purpose, in Bengal

* Probably one for each district.

2) Sir H. Adamson also formulated a scheme* in 1908 His proposal was to effect a complete separation of judicial & executive functions and the appointment at the Head Quarters of each district of a Dt officer and a Senior magte - the Dt officer to be in charge of the executive work and the Senior magte of the judicial work. The Dt officer is to be assisted by Civilians, Dy Collectors & Sub Dy Collectors and the Senior magistrate by Civilians, Dy magtes & Sub Dy magtes. This scheme involves the appointment of a Senior Dt magistrate in each district where the experiment has to be tried.

For details vide Supr Legl council Proceedings of 27-3-1908

The Hon'ble Pandit Madan Mohan Malaviya.

'The method of carrying out the principle does not admit of any complexity. Govt have only to add a few Dy Collectors or to appoint a few junior Magtes to deal with judicial cases alone and the question will be very near solution'.

The Hon'ble Mr. Vijayaraghavacharia.

'It involves not only a complete severance of the whole agency from executive functions but also questions as to special qualifications, mode of recruitment, promotion, as well as the kind of machinery for their supervision

The Hon'ble Raja Kushalpal Singh.

) The disposal of the greater part of the criminal work can safely be entrusted to Honry Magtes sitting Singly or by benches.' It is not at all difficult to so distribute work and allot officers so as to make available a sufficient number of them for purely executive work.

III

R.A.15

Extract from the address presented to the Dewan by Mr. B. Venkata Krishnaya

(v) The all-important reform of the separation of the Judicial from the Executive functions is one of the important reforms that the Judicial Conference urged on the attention of the Government. We pray that this recommendation of the Conference may be soon adopted and put into execution in all its details.

May this be placed on the connected file

cvs ch 312—12?

Yes

12/5/15

12/5/15

SUBJECT NO. 14 — *Summary of discussion*

Separation of judicial and executive functions.

Messrs. Bhima Rao, Channagiri taluk; K. Shankaranarayana Rao, Shimoga taluk; Siddappa, Ramanna, Shankarappa and K. Channakesaviah, Tirthahalli taluk; B. Narasinga Rao, Seringapatam taluk; Padmanna, Chandrasekhariah and K. Venkatasamiah, Nanjangud taluk; Srinivasachar, T. Narsipur taluk; A. R. Nageswara Iyer, Law Association, Bangalore; B. Gundu Rao, D. Srikanta Rao and Gurunanja Wadiyar, Devanhalli taluk and M. Subbasetti, Devanhalli Municipality; B. Srinivasiengar, Anekal taluk; and K. Ramanna, Hole-Narsipur taluk.

Amildars may have no magisterial functions for the undermentioned reasons:—

(i) There is considerable increase of work in recent years.

(ii) They are important police functionaries.

(iii) They will find more time for touring and to devote attention to questions relating to the material advancement of the people.

(iv) Popular confidence in the administration of criminal justice will increase.

(v) Excessive cost may be avoided by investing the Taluk Sheristedars and selected Sub-Registrars with magisterial powers.

II. Generally, the judicial may be separated from the executive functions. As a beginning, the following measures may be adopted with a view to avoid excessive cost:

(*a*) Sub-Judges and Munsiffs may be invested with magisterial functions, their number being increased, if necessary.

(*b*) In every district appeals from the orders and sentences passed by magistrates who are also executive officers may be heard only by officers who have no work other than judicial.

It was admitted by the members that there were certain difficulties in the way, one of which was want of funds and a suggestion was made that the experiment might be tried in one district and introduced in the other districts should it prove a success and that the separation of the functions might commence with the Amildars.

Mr. B. Narasinga Rao and some others said that, in case Government intended to invest Sub-Registrars with magisterial powers, people would be content with the continuance of the existing system.

Reply of Government.—The question is under consideration.

This may be placed on the connected file. ch 312-12

27.4.16

Separation of
Judicial & Executive functions

I. The Note of Mr Chandrasekhara Iyer may be printed without his name for purposes of consultation

II The following may be consulted with reference to the Note.

A. Official :—

(i) Chief Judge ✓
(ii) Rev. Comm ✓
(iii) D. J. of Bhadrachalam ✓
(iv) Ds Comms. ✓
(v) The D. J. of Regr. ✓

B Non-Official

Members :—

✓ (i) A. Ramanna
✓ (ii) S. R. Balakrishna Rao
✓ (iii) Sankar Narayana Rao
✓ (iv) Basavayya
✓ (v) B. Narasinga Rao
✓ (vi) B. K. Ganachari
✓ (vii) Nagadi Krishnamurthi
✓ (viii) C. Seenivasa Rao
✓ (ix) M. Venkata Krishnaiah
✓ (x) Venkatesh
(xi) Venkatasamiah
✓ (xii) Ramachandra Rao
✓ (xiii) Mr. Ranjiengar

Subsidiary :—

Draft
9/10/16

Note

Not intended for publication.

For sometime past what is popularly known as the question of "the separation of Judicial from Executive Functions" has been under discussion in its various aspects among official and non-official gentlemen interested in it.

2. A proposal that has been made in certain quarters is to multiply the number of Munsiffs and make them Magistrates in addition. This is neither quite feasible nor expedient as it is apt to interfere with the disposal of Civil Cases. The fact that Munsiffs like other Civil Court Judges enjoy an annual vacation is a further reason for not tacking on criminal work to them.

3. The following is another scheme which has been suggested.

(i) Deputy Commissioners will continue to be District Magistrates, as it will cause some inconvenience and dislocation of business if they are replaced entirely by a fresh set of officers.

(ii) For the disposal of original criminal work now done by the subordinate Revenue officers, a separate agency may be provided, *viz.*, (i) 8 special First class Magistrates, one for each district, to be located at the District head quarters, (ii) 19 special second class magistrates to be located at convenient centres, for the trial of second and third class cases and, (iii) Benches of Magistrates may also be constituted wherever practicable to take part in the trial of second and third class cases; and on such Benches a place may be found for duly qualified special sub-registrars.

A suitable distribution of taluks among the special Second class Magistrates has been suggested in the appendix to this note, with due reference to the statistics of the work of the various magisterial courts in the State during the past official year. This is intended to approximate equalisation of business, and, what is much more important, promote the convenience of the local population in regard to distance. The distribution suggested is a tentative one and may be modified as experience may suggest. District Magistrates will no doubt be able to make the work of these Magistrates as nearly equal as practicable by a system of transfers of cases.

(iii) 6. The above arrangement will allow of the withdrawal of criminal work from all Assistant Commissioners and taluk officers; but Sub-Divisional Officers may continue to be *ex-officio* fist class magistrates exercising only the powers referred to in chapters VIII to XII of the Criminal Procedure Code, which are essentially of an executive character.

(iv) 7. Appeals against convictions by 2nd and 3rd class Magistrates will be heard by District Magistrates or by the special First class Magistrate whenever they are transferred by District Magistrates to them.

(v) 8. The new staff of special Magistrates would form part of the Judicial service like Munsiffs, Sub-Judges and District Judges. The appointments of Munsiffs and Sub-Judges may be interchangeable with those of the new Special Magistrates, in order that officers trained in both civil and criminal work may be available for promotion to higher appointments in the Judicial Department.

(vi) The total cost of the proposed scheme will be as shown below:—

	Rs.
Pay of 8 Special Magistrates of the First Class rising from Rs. 500 to Rs. 600 by biennial increments of Rs. 50 (8×550×12).	52,800
Pay of 19 Special Magistrates of the Second Class rising from Rs. 200 to Rs. 400 by triennial increments of Rs. 50 (19×300×12)	68,400
Ministerial establishments of 8 First Class Magistrates' Courts at Rs. 1,545 each.	12,360
Do 19 Second Class Magistrates' Courts at Rs. 1,065 each	20,235
Menial Establishments of 27 Courts at Rs. 348 each	9,396
Contingencies for the 27 Courts at Rs. 200 each ...	5,400
Total ...	1,68,591

Deduct.—

Pay of the three existing full-time Magistrates of the First Class who will be absorbed in the new scheme (calculated at the same rate as that of the new special Magistrates of the First Class) 3×550×12.	19,800

and of their Establishments:—

	Rs.	
(a) City Magistrate, Bangalore	2,276	
(b) Do Mysore	2,081	
(c) Special Magistrate, Kolar Gold Fields	3,230	
		7,5
Total		27,387
Total cost of the scheme		1,41,204

Camp Mysore
dated the 12th Oct
1916.

12/10

APPENDIX.

Districts	Number and location of Courts of Special Second Class Magistrates	Territorial Jurisdiction
Bangalore	1. Bangalore	Bangalore ; Hoskote ; Anekal.
	2. Closepet	Closepet Sub-taluk ; Channapatna ; Magadi ; Kankanhalli.
	3. Dodballapur	Dodballapur ; Devanhalli ; Nelamangala.
Kolar	1. Kolar	Kolar ; Srinivaspur ; Chintamani.
	2. Kolar Gold Fields	Bowringpet ; Mulbagal ; Malur.
	3. Chikballapur	Chikballapur ; Goribidnur ; Bagepalli ; Sidlaghatta ; Gudibanda Sub-taluk.
Tumkur	1. Tumkur	Tumkur ; Tiptur ; Chiknayakanhalli ; Kunigal ; Gubbi ; Turuvekere Sub-taluk.
	2. Maddagiri	Maddagiri ; Pavagada ; Koratagere Sub-taluk ; Sira.
Chitaldrug	1. Chitaldrug	Chitaldrug ; Hiriyur ; Challakere ; Molakalmuru.
	2. Davangere	Davangere ; Holalkere ; Hosdurga ; Harihar Sub-taluk ; Jagalur.
Mysore	1. Mysore	Mysore ; Hunsur ; Yedatore ; Malvalli.
	2. French Rocks	French Rocks Sub-taluk ; Seringapatam ; Krishnarajpete ; Nagamangala ; Mandya.
	3. Nanjangud	Nanjangud ; T.-Narsipur ; Chamarajnagar ; Gundlupet ; Heggaddevankote.
Hassan	1. Hassan	Hassan ; Manjarabad ; Belur ; Alur Sub-taluk.
	2. Channarayapatna	Channarayapatna ; Arsikere ; Hole-Narsipur ; Arkalgud.
Kadur	1. Chikmagalur	Chikmagalur ; Mudgere ; Koppa.
	2. Tarikere	Tarikere ; Kadur ; Narasimharajapura Sub-taluk.
Shimoga	1. Shimoga	Shimoga ; Honnali ; Chennagiri ; Tirthahalli ; Kumsi Sub-taluk.
	2. Sagar	Sagar ; Sorab ; Nagar ; Shikarpur.

Mysore
12th Oct 16

D.O.

OFFICE OF THE DY. COMMISSIO
MYSORE DISTRICT.

Dated, Mysore 12021 1

12/2/21

Confidential

Dear Sri

As desired in yo

D.O. No. G 74-97 y this
date I enclose brief
memo regarding the other
contents in the printed
memo, for the separation
judicial from executive

mechois.

Yours truly

Thomas

Jacques Lyon Esq
Undersecretary

Bruce

Confidential.

Note on the scheme for the separation of Judicial from Executive functions.

I confine my remarks here to the suitability nd practicability of the scheme proposed in the printed note, assuming that the Government have decided to carry out a separation.

2. It is proposed to substitute for the existing 1st, 2nd and 3rd class magistrate's courts, one whole time first class magistrate and two to three second class magistrates courts for each district. In the Mysore District, there are at present, in addition to the court of honorary Bench Magistrates, one whole time first class magistrate for the Mysore City, three Assistant Commissioner Magistrates in charge of three Sub Divisions, one Treasury Assistant Commissioner and 1st class magistrate, one Special Land Acquisition Officer and 1st class magistrate, one Probationary Assistant Commissioner and 2nd class magistrate and 15 second and third class Amildar and Deputy Amildar magistrates (including the one at Yelandur). The Treasury Assistant Commissioner magitrate does not do much magisterial work; the Probationary Assistant Commissioner magistrate is an officer under training and may be left out of consideration; the Special Land Acquisition Officer hears only summary cases and some appeals, and the Mysore Taluk Amildar exercises magisterial power only to a very limited extent. If these four are left out of account, there are now one whole time first class magistrate, three other 1st class magistrates who devote about half their time to magisterial work and 14 Amildar Magistrates

who

who devote one-third to one-fourth of their time to magisterial work. It is clearly impossible that the magisterial duties of these 18 Officers can be performed by one full time first class magistrate and two full time 2nd class magistrates. The number of whole time officers that would be required for the efficient discharge of the magisterial duties of the district would be:-

One first class magistrate for the city(the present city magistrate has full work) ; two first class magistrates for the rest of the district; (these would also do some appellate work and give a certain amount of relief to the district magistrate). These may be stationed at Nanjangud and French-rocks,four second class magistrates stationed at Mysore, Hunsur, Mandya, and T. Narasipur.

The cost as far as the Mysore district is concerned will thus be a little more than double what is provided in the present scheme.

3. The seheme provides for Assistant Commissioners in charge of Revenue ~~xxxxx~~ Sub Divisions being ~~namely~~ invested with magisterial powers but to exercise only the powers referred to in chapters VIII to XII of the Criminal Procedure Code. This will have to be done in the case of Amildars also since one special 2nd class magistrate cannot exercise efficient executive control over the four or five taluks.

4. If there is only one first class magistrate in any district, there will be no other magistrate to whom cases could be transferred when found necessary and since parties are only too ready to make allegations against magistrates, this will mean that the district

56

Mysore,
13th October 1916.

To

The General and Revenue Secretary

to the Government of Mys ore

CAMP MYSORE.

From

M. Basava Iya,

Member, Legislative Council, MYSORE.

Sir,

In reply to your D.O. letter No. G 74-79 date October 1916, I have the honour to submit the following opinion "On the question of the separation of the Judicial and Executive functions."

1. The question of the separation of these functions, is engaging the kind attention of the Government of Mysore for some years past, and the Representative Assembly and the Legislative Council have equally been urging the question for a careful solution. However, no definote scheme which will satisfy all conditions was laid before Government and the matter was therefore dropped on account of excessive cost. However, the note con-

containing one of the schemes is now circulated with the above letter. The scheme though it appears effectual, does not completely separate the functions and appears also to emerge from the long standing plea of want of funds, with a liberality not very necessary. The high cost of the scheme being the special feature of its abandonment. I hope economy will be consistent with efficiency.

2. I have my own doubt that if the scheme proposed for the purpose of separating the judicial functions from the executive, is adopted, whether it will not lower the status of the Amildar in the estimation of the people in his taluk and whether it will not hamper his efforts at revenue collection and his work in the improvement and progress committees, unless at least third class magisterial power is retained in him and he is kept as heretofore as the head of the taluk police administration, without however the power to try cases?

3. I agree that the Deputy Commissioner may continue as the District Magistrate to avoid inconvenience and dislocation of business. The time is not yet ripe for a complete and radical separation, though in the debates of the Imperial Legislative Council and in Baroda much though and elcquence was spent by a few non-official

members to devest the district head of the administration of his judicial function. I agree that all assistant commissioners and amildars shall be devested of first and second class magisterial power and power to try all classes of cases; though the subdivisional officers who are ex-officio first class magistrates may continue to exercise the executive power contemplated in chapters 8 to 12 of the Criminal Procedure Code. The objection to the judicial power of revenue officers will not pernently apply to the treasury assistant commissioner in district towns as he appears to be the least worked officer in the State. He may therefore be vested with first class powers to try such cases and hear such appeals as are referred to him by the district magistrate. He may also exercise second class power in the district taluks. When a complete separation is contemplated as time advances and the success of this measure is ensured, the sessions judge of each division may be appointed the ex-officio district magistrate in each district within his jurisdiction and his pay may be raised by three hundred rupees per month.

4. Instead of appointing eight special first class magistrates with higher pay and status, I propose that eight schedule assistant commissioners may be appointed

whole time first class magistrates with a progressive pay from 250 to 450 rupees a month with bi-annual increments of 50 rupees.

5. There are now 68 taluks and 9 sub-taluks in the Province. If the nine sub-taluks could be converted to four pukka taluks as now contemplated by Government, we will have about 72 taluks. Deducting from them eight district head quarter taluks where the treasury assistant exercises second class powers, there remain 64 taluks which ought to be provided for. We may appoint 32 second class magistrates one for every two taluks with the pay of an amildar Rs. 150 rising to 250 with tri-ennial increment of Rs. 25. The ministerial, and menial establishment and contingency mentioned in the note may be adopted with slight modification. The first class magistrate for the cities of Bangalore, Mysore and Kolar Gold Fields may be retained. The new staff of magistrates may form part of the judicial service like the munsiffs and are inter-changeable with them when they acquire civil knowledge and are recommended by the chief court. First class magistrates of higher grades efficient in civil and criminal work may on the recommendation of th chief court be appointed subordinate judges.

6. The benches of magistrates in the district towns shall exercise only third class powers and shall be presided over not by a retired officer of Government as at present. The chairman of the bench may as Government think fit be a third class magistrate of the grade of the sub-registrar magistrates hereinafter proposed, to advise the bench on points of law.

7. In all taluk towns the sub-registrar who has generally better education-qualification than the average seresthedar of the taluk, will be vested with third class power for each taluk and his pay may be raised to give him the pay of a deputy amildar Rs. 80 rising to 100, with a view to attend to urgent needs and the petty cases in the taluk.

8. Appeals against the conviction of second and third class magistrates shall lie to the district magistrates or any other first class magistrate in the district to whom it is referred to by him. Appeals from the first class magistrate shall lie to the sessions judge of the division.

9. Probable cost of the scheme (additional).

8 8 District Magistrates - - nil

8 Treasury Assistants 1 & 2 class Mgt. nil

sub-divisional officers ex-officio

1 class Mgt.

8 first class magistrates 12 X 8 X average 350 = 33,600 Rs.

32 special second magistrates 32 X12 X average 200 = 76,800 Rs.

72 sub-registrars at 72 X 12 X 20 extra = 17,280 Rs.

Establishment menials and contingency = 40,000 Rs.

8 sub-registrars chairman of bench courts 8 X 12 X 20 = 1,920 Rs.

Total - - 1,69,600 Rs.

as compared with ~~one-lakh-68~~ Rs. 1,68,591 the cost of scheme mentioned in the note.

(The city magistrates of Bangalore Mysore and K.G.F. nil).

10. The following figures from the general budget of the State for 1916-17 pages 86 to 87 showing the expenditure of criminal courts subordinate to the district magistrate, as herein shown are worthy of consideration. These are debited to the item expenditure 16 Ag to law and justice.

Half of salaries of assistant commissioners p 28 - Rs. ~~71,9~~ 71,968.

Ditto of amildars and deputy p 32 - 82,050

Ditto Asst. Comr.'s establishments p 30 - 17,994

Quarter of taluk office establishment p 33 - 1,10,267

Half of ~~TA~~.T - A of Asst. Comr's p 31 - 16,500

Half of T - A of amildars p 33 - 17,000

Bench magistrates courts - - Rs. 1,080 plus 750

First class Mgt. K.G.F. - - Rs. 12,900 (charge to Mining revenue)

Ditto for Bangalore and Mysore - 12,624

Three eighths salary of deputy commissioners for being district magistrates - 37,650

Note. Receipt of Rs. 50,000 from fees, fines and forfeitures

11. The above will, I trust, give us a fairly complete separation of the judicial from the executive functions, with a minimum cost raise the tone and status of our magistracy, offer sufficient inducement to them, and justice will sufficiently even and near at hand and I hope this scheme may also ensure a successful solution of the problem of separation.

I remain, Sir,

Your most obedient servant,

K. Basava Raj

High Court Vakil &

Advocate.

B. NARASINGA RAO,
FIRST GRADE PLEADER,
AND
MEMBER, MYSORE LEGISLATIVE COUNCIL.

Lakshmeepuram Girls' school
~~SERINGAPATAM~~ Mysore.
13. 10 1916.

12/13/10/16

To

V. C. Jagannada Iyer Esq^r BA. BL.
Under Secretary to Govt.
Camp Mysore.

Sir

In reply to your D.O. No. G. 74-97 dated 12th instant covering my opinion on the draft scheme for the separation of judicial from Executive functions, I have the honor to state as follows:—

(1) As regards cl. (i) of para 2 of the note enclosed with your letter, I should like to say that tho' the continuance of the Dy Commissioners as District Magistrates cannot be considered as a complete separation of the two functions, since they also are also the heads of the police department in their districts, still they may continue to be District Magistrates for some time to come — till the new scheme of separation is placed on a proper basis & given a fair trial. But the Dy Commissioners should exercise only the powers referred to in Chapters

VIII to XII of the Criminal Pro: Code whenever necessary as these powers are of an executive character & the Dy Commissioner is the head of the Executive in the district. I would suggest one other modification in the said (i) clause (iii) by leaving the right of appeal against the decisions of II & III class Magistrates directly & exclusively to the Special First class Magistrates contemplated in cl: (ii).

(2) As regards the next clause (ii) I would invite the kind reference of the Govt: to a scheme which I submitted to the Judicial Conference more than 2 years ago & a copy of which I am herewith enclosing for ready reference. The idea of Special II class Magistrates has been submitted by me already but I would urge that an increase in their no: as the present provision of 19 will prove completely inadequate. I arrived at 30 as the minimum requisite no: after some careful calculation of local needs & I might be permitted to urge again that a smaller provision would entail difficulties of one type or another both to the officers & the public. There are certain Taluks in the province which would provide sufficient criminal work for a whole time Magistrate

B. NARASINGA RAO,
FIRST GRADE PLEADER,
AND
MEMBER, MYSORE LEGISLATIVE COUNCIL.

(3) As regards cl. (iii) para 2 of the note, There would be certain amount of policy & convenience in public & official work, if the present Amildars & Dy Amildars, except in places where Special 1st & 2nd class Magistrates would be stationed, are, like the Sessions' and Subdivision officers, allowed to exercise powers under the Criminal Pro. Code which are of an executive character, and also grant remands issue licenses under the Police Regulation &c. The scheme under consideration aimed and help alleviate the miseries of escorting police prisoners over long distances to obtain remand &c. would involve fatigue, waste of escort work, chances of escape, opportunities for ill-treatment &c.

(4) The modification in cl. (IV) has been suggested in para 1 of this letter.

(5) I am in complete agreement with the objections of cl. (V) of para 2 of the note.

(6) With reference to the question of cost [illegible] but approximately accurate

estimate already submitted would not be more than the one now proposed, though it provides for a larger no. of second class Magistrates & a more satisfactory separation of two functions.

(7) As regards the constitution of Bench Magistrates with Special Sub-registrars as one on the Bench as suggested in cl: (iii) of para 2 of the note, it is rather important to secure the services of intelligent & capable non-officials in Calcutta head quarters, to serve as honorary II class Magistrates. The appointment of Sub-registrars to work on such benches would not, in my humble opinion, improve the administration of criminal justice.

(8) I might be permitted to add that the new staff of 1st & 2nd class special Magistrates may be placed entirely under the District and Sessions' Judges & the Chief Court, the power of initiation of appointments, promotions & transfers resting with or on the recommendations of the Chief Court.

Further, the question locating lock-ups outside police stations & appointing a separate & independent officer unconnected with the [illegible] in charge of the lock-ups, is a

B. NARASINGA RAO,
FIRST GRADE PLEADER,
AND
MEMBER, MYSORE LEGISLATIVE COUNCIL

SERINGAPATAM/

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long pending one & it was being urged in the Representative Assembly now & again. The Sub-Registrar ... is a block that exert very little control u--- supervision over the treatment of prisoners & my personal complaint is that my prisoners are not well treated & they have manifold hardships which require immediate redress. The new classes of Magistrates proposed, i.e. Officers of higher status & greater independence may be placed in charge of lockups wherever p

I have the honor to be
Sir
Your most Obedient Servant
B Narasinga Rao

Speech of V.V.Giri reading at the Judicial Conference 70

ORGANIZATION OF JUDICIAL DEPARTMENT

Necessity for specializing the Judicial Department.

The Judicial Department should be made a separate and independent department in the same way as Engineering, Medical, Forest and other technical departments. The cadre of the Department should consist of Chief Court Judges, District Judges, Subordinate Judges, Registrar and Deputy Registrar of the Chief Court, Magistrate of the Kolar Gold Fields, City Magistrates of Bangalore and Mysore, Munsiffs and other officers whose functions are purely judicial. The daily increasing volume of Law literature requires a close and constant touch with the subject. The cases coming up for adjudication before courts present many intricate questions of Law. It is therefore necessary to specialise the department.-

11. Separation of Judicial from Executive functions.

(1) This question is an old one in India and has been discussed threadbare by eminent persons, both European and Indian. Preponderance of opinion is in favour of a complete separation.-

(2) So far as I have been able to trace the history of this subject in British India, the combination of these two functions was first effected in 1787 on the ground as Sir John Shore put it that "People accustomed to despotic authority should look to one master; it is impossible to draw a line between the Judicial and Revenue Departments to prevent them from clashing, and in this case either the revenue must suffer or the administration of Justice must be suspended." In 1793, however, Lord Cornwallis was of opinion that the result of the combination of the two functions was calculated to sacrifice the administration of Justice to the supposed fiscal interest of the Government. By

By Act 11 of 1793. the Judicial powers exercised by collectors were withdrawn from them. This system of separation continued till 1821 when a permissive regulation was passed (Regulation IV of 1821) empowering the Governor-General in Council to combine the duties of collectors and magistrates. Accordingly the combination of the two functions was again effected and this continued for a few years. It was then found that the collector were so over worked with their ligitimate duties as Officers of Revenue, Police and other various departments that their Judicial duties were sadly neglected. In 1837 Lord Aukland seeing the inconvenience of the fusion of the two functions obtained the sanction of the Court of Directors for bifurcation of these functions which was accordingly effected. In 1859. however. the Judicial functions were again combined with those of the Executive as a temporary measure on account of the disturbed condition of the country which then prevailed. What was considered a temporary arrangement unfortunately still continues.

(3) The evil resulting from the combination of the two functions has been discussed times over both from platforms and in the Press by eminent persons who are competent to pronounce an authoritative opinion on the subject. In 1838. a Committee, appointed by the Government of Bengal to formulate a scheme for the more efficient organization of the Police, characterized the combination of Judicial and Executive functions as "absurd as well as mischievous" In 1859 eminent Anglo-Indian officers of varied experience, viz.:- 1. Lord Hobhouse, 2. Sir Richard Garth, 3. Sir Richard Couch, 4. Sir Charles Sargent, 5. Sir William Markby, 6. Sir John Scott, 7. Sir William Wedderburne, 8. Sir Donald Wilson, 9. Sir John Phear and 10. Mr. H.J. Reynolds, who had to do a great deal in the administration of Justice in

in India, submitted a memorial to the Secretary of State for India, pointing out forcibly the evils of combination and urging on the Secretary of State to effect an immediate separation of the two functions. The latest pronouncement of the Government of India on the subject in favour of the separation, will be found in the speech of Sir Harvey Adamson, Home Member, delivered in 1908. Sir Harvey Adamson is reported to have said, "In short there is the unconscious bias in favour of a conviction entertained by the magistrate who is responsible for the peace of the district or by the magistrate who is subordinate to that magistrate and sees with his eyes. The exercise of control over the subordinate magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective. This control indirectly affects the judicial action of the subordinate magistrates." x x x x "If the control is exercised by the officer who is responsible for the peace of the district, there is the constant danger that the subordinate magistracy may be unconsciously guided by other than purely judicial considerations. I fully believe that subordinate magistrates very rarely do an injustice wittingly. But the inevitable result of the present system is that criminal trials affecting the general peace of the district, are not always conducted in the atmosphere of cool impartiality which should pervade a court of Justice. Nor does this completely define the evil, which lies not so much in what is done as in what may be suspected to be done; for it is not enough that the administration of Justice should be pure; it can never be the bed-rock of our rule unless is also above suspicion. x x x x On these grounds the Government of India have decided to advance cautiously and tentatively towards the separation of Judicial and Executive functions in those parts of India where the local conditions

conditions render that change possible and appropriate. The experiment may be a costly one but we think the object is worthy As to the objection that the prestige of the Executive officers would suffer if they are deprived of magisterial powers, Sir Harvey Adamson said that the combination of functions is a direct weakening of the prestige of the Executive. By implication, therefore, he said that the separation of the two functions would enhance rather than lower the prestige of the administration.-

(4) Thus it will be seen that the principle underlying th separation of the two functions has been upheld by the highest authority and I am convinced that there can be no two opinions about it.-

oming now to the Native States, in the sister State of Baroda, a complete separation was effected more than eight years ago, and the system so far as one can learn from the latest reports, is working very satisfactorily without in any way impairing the prestige of the Executive officers or creating any difficulty in the maintenance of peace and order. I further learn from newspaper reports that in the small state of Cochin also, the separation has been effected. In our Province the principle of separation was in a way upheld by our Government in 1907 and as an experiment some of the Amildars were relieved of their magisterial functions. In 1908 in his address to the Representative Assembly, the Dewan said that the experiment of having relieved some of the Amildars of their magisterial work proved satisfactory and the effecting of a complete separation was ~~openly~~ only a question of finance and time. There the matter sta...

The Amildars, Assistant Commissioners and the Deputy Commissioners are saddled with very heavy and important duties such as, Revenue, Police, Excise, Forest, Local Boards, Municipality, Muzarai, Economic Conference and many other departments.

It is impossible for these officers to discharge satisfactorily magisterial functions in addition to the above said duties, and as a consequence either one or the other, if not all, is being neglected. Criminal cases are adjourned from time to time by these officers on account of some unexpected emergent business. The Amildars and the Deputy Commissioners being the Heads of Police in their respective talluks and districts, it is rather difficult for them to dissociate themselves from what they may have heard about a case or the antecedants of the accused and wh may have come to their notice through the [illegible] mitted by the Police. Though it m [illegible] that these officers intentionally do injustice in cases coming before them, yet the combination of the [illegible] and the position the officers occupy as peace preservers of the District or Taluq, are generally viewed with distrust and suspicion and an early removal

Proposed Scheme:-

I may be permitted to indicate the broad outlines on which the system may be tried leaving the details to be worked out either by Government or by a Committee which may consist of a few experienced Government officers and a few non-official gentlemen.-

(1) Every district may have a Sub-Judge. There are three Sub-Judges already. Five more are to be appointed. The Sub-Judges will,

(a) try Civil Original cases over Rs. 2500/- and under Rs. 10,000/

(b) act as Assistant Sessions Judges;

(c) hear appeals from the Judgements of 2nd and 3rd Class magistrates in the District

(d) hear such Civil appeals as may be transferred to them by the District Judges.

(2) Assistant Commissioners may be relieved of their magisterial functions and stationary magistrates appointed for one or a group of 2 or more taluks to try criminal cases. They may also hold their courts in convenient centres of different taluqs for a definite period in each month. Among the stationary magistrates, at l rst class magisterial powers may be stationed at the District Head-quarters to try first class cases in the district. These stationary magistrates and subordinage Judges may be placed entirely under the control of the District and Sessions Judges and the Chief Court. The chief Court may be entrusted with the power of initiating transfers and promotions of these officers. The supervision of the work of these magistrates may be entrusted to District Judges who will be better able to do it than the over worked Deputy Commissioners. The Deputy Commissioners may retain the preventive magisterial powers for the time being till the system is given a fair trial. The Deputy Commissioners and the Amildars may exercise their police powers more efficiently in the arrangement suggested above. This scheme, if given effect to, will increase the number of judicial appointments in the cadre and enable judicial officers to look for promotion only in the department. Further the specialization suggested above will make the officers preserve their independance which is quite essential for the administration of justice, encourage them to invest money in the purchase of costly legal publications and to read them to keep abreast with the times with the hope of reaching the highest rung in the ladder of service. It will also remove stagnation in the department and ensure free flow

flow of promotion and thus avoid discontent in the lower grades of service.-

Cost of new Scheme

(1) Every district has besides a Superintendent of Police, 4 or 5 Assistant Commissioners including the Excise officer Since the Assistant Commissioners will according to the scheme, be relieved, of their magisterial work, their revenue jurisdiction may be extended and they will have ample time to devote themselves for Revenue as well as for Excise work in the District and two qualified Assistant Commissioners viz., may be taken away from the Revenue Department and transferred to the judicial department.-

(2) About 30 stationary magistrates may be required to be appointed for one or a group of two or more [illegible] second and third class criminal cases and one stationary magistrate with first class powers to try first class cases may be stationed at each of the District Head Quarters.-

(3) The total cost of the New Scheme will be per mensum.-

	Rs.
(a) 5 Sub Judges at Rs. 500/ each ----------	2,500
4 clerks for each court, (40-35-30-20) total Rs. 125	625
5 peons for each court at Rs. 7/ ----------	175
Miscellaneous at Rs. 50/ each -------	250
(b) 30 Stationary Magistrates at an average pay of Rs. 200/ each	6,000
3 clerks for each court at Rs. 75/ ------- (30-25-20) --------	2,250
4 peons at Rs. 7/----- ------	840
Miscellaneous expenditure at Rs. 25/ each	750
(c) 8 First Class Magistrates in District Head-Quarters at an average pay of Rs. 400/	3,200
3 clerks (40-30-25) total 95	760
4 peons at Rs. 7/ each ------	224
Miscellaneous expenditure at Rs. 25/----	200
	17,774

Total cost for whole year will be Rs. 2,13,288\ or in round numbers Rs. 2,14,000/-

(4) (a) Since 8 Assistant Commissioners and 8 Excise officers will be withdrawn from the Revenue Department, their average pay may be put down as Rs. 300/- a month, which will come to 300 x 16 x 12, Total Rs. 57,600

(b) A portion of the ministerial officers and menial staff of these sixteen officers and of the existing sub-courts and also judicial clerks from all the taluks may be taken away and drafted to the newly formed courts. By doing so at least one half of the cost of establishment including miscellaneous charges will be saved. This will come in round numbers to Rs. 37,000/-. Adding this sum to the amount in para 4 (a), the total will

(57,600 plus 37,000) - total Rs. 94,600/-.

(c) By deducting this sum from the total cost of Rs. 2,14,000/-, the net extra expenditure will come to (2,14,000 - 94,600) or 119,400 rupees; or roughly Rs. 1,200,00/-.

(d) Besides, since the Amildars will be divested of their magisterial powers, the area of their revenue jurisdiction may be extended so as to reduce the number of taluks where ever possible and convenient ~~xxxx~~ and thus effect a saving. In small taluks instead of an Amildar, a Deputy Amildar may be stationed. So, when the ~~xx~~heme I have suggested is carefully worked out, net extra expenditure may amount to very much less than one lac of rupees which sum ought not to be grudged, when the object in view is taken into consideration.-

-----o:O:o-----

From

K. Shankarnarayan Rao, M.A.,B.L.,
ADVOCATE.

Mysore
~~SHIMOGA.~~
13/7/07 191 6.

J. E. Jayarama Iyer, Esquire B.A. B.L.,
Undersecretary to Government
Camp, Mysore

Sir

In reply to your D.O. No. G. 74-79, I ha
the honour to state as follows:-

The idea of separating the judicial from
executive functions is very desirable and neces
The number of Special 2nd Class Magis
seems to be quite insufficient to meet the
requirements of the Province. The groupings o
Talugs and the location of the Courts propos
in the note need, in my humble opinion, n
alteration. If I am given some more tim
I ~~should like to~~ am prepared to give a detailed pro
on the subject.

I am not in favour of divesting the
Talug Amildars absolutely of their Mag
functions. For granting licenses, grant
remands and controlling assemblies
Executive functions of this sort, it is
that they exercise Magisterial functions
till we have a good enough number

Special Magistrates to meet demands of this sort. Otherwise there will be some difficulty as the Special Magistrates are too few & will be too far away to meet contingencies. But I am quite definite that the trials of cases should be conducted only by Special Magistrates.

I am not in favour of ~~District~~ Deputy ~~Magistrates~~ Commissioners continuing to exercise functions as District Magistrates as heretofore. But this matter may be considered at a later stage.

I am not also in favour of subsidising ~~being given a place on Benches of Magistrates~~ retired officers of and above the Grade of Assistants, if available may be requested to be the Chairman of Benches.

The separation proposed is absolutely necessary. If the suggestions proposed cannot be considered immediately - What is proposed in the note may be tentatively adopted for the present.

I agree with Mr. Venkatachellam Krishnaiyya

I have the honour to be
Sir
Your most obedient servant
[illegible]

Rao Bahadur M. C. Rangiengar, B.A.,
Advocate

Mysore,
13th Oct 1916.

To

T. E. Jayaraman Esq
Personal Asst to Resident
Camp Mysore

Dear Sir,

Your Confidential D.O. No. S.74-97 of 12th Inst. was put into my hands last evening when you asked me to express opinion on the question of the Separation of Executive functions before this evening. The question is too difficult and complicated in nature as well as scope to be answered in the few hours at my disposal to-day, especially as I have to attend an important meeting of the University Council at 12 noon tomorrow, in compliance with your requisition, I hasten to

briefly indicate below my thoughts
between on the matter, apologizing for the
very sketchy character of their expression

1. If, as I take it, Providence satisfied
that the separation is both desirable
and necessary in the interests of good
and efficient administration, the
considerations of economy (which do
certainly will not be small) large
and of inconvenience and difficulty
in rearranging public business should
not - both should not be obstacles or
interference with the introduction of a
Reform in the shape in which it can
be most effective. Half measures
of Reform are worse than no Reform

Rao Bahadur M. C. Rangiengar, B.A.,
Advocate.

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Mysore,

Hence I plead for the total separation
of the two functions, viz. - that of
administering criminal justice now
entrusted to the Civil Courts and that
entrusted under the control of the
Chief Court as in the case of the Civil
Justice now, - of course to the Ordi-
nary Statutes, none of such
the Civil Judges who ... such are
men of good character and high at-
tainments, and who are now im-
partially discharging their duties
conscientiously to the satisfaction
of the Govt and of the public at large,
are well-fitted to administer Criminal

Notice also. The Canadian system of Constitutional Courts should be, for promotion to higher appointments, a body of subordinate judicial officers trained both as civil judges and as Magistrates will best be realized by uniting both civil and criminal functions, rather than by having separate bodies of civil judges and Magistrates and interchanging them

Publication of Courts under establishment ought to be received as far as possible

In this view I propose —

(1) The establishment of such Municipal Courts as will give the Municipality to enact

Rao Bahadur M. C. Rangiengar, B.A.,
Advocate.

Mysore,

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two taluks on an average — some Munsiffs having jurisdiction over more than two taluks while a few have jurisdiction only over taluk according to the nature and volume of work. The Munsiffs will be 1st or 2nd class magistrates according to their qualification and experience.

(2) One Sub-Judge in each district with Civil jurisdiction up to Rs 5000 and power to entertain, hear, and decide Civil appeals in the district of the value of Rs 1000 and under. The other appeals will go to the District Court as at present. The Sub-Judge will entertain, hear, and decide

Criminal appeals from the Judgm
of the 2nd Class Magistrate-Inquiry C
he will also be the District Magistrate
of the District: The Dy. Com[r] as the
District Head of Police will exerci
all the prevention powers under
the Law

3 I do not apprehend either the
Civil or the Criminal work will
be allowed to suffer, because wo
only will the Judges be men of ex
and Capacity, but also they will
be under the effective and frequent
supervision of the District & Sessi
Judge and of the Chief Court.

Moreover arrangement would
involve a considerable reduction
in the number of Candidates and
consequent loss, resulting in a
saving of Rs 1000 or 1200.

5 With however time and with the
necessary materials made available
to me, I should be able to draft
a fairly complete scheme for
the consideration of Govt.

I am fully alive to the Communal character of my Memorial, and but confident

that it or something like it
alone would be productive of the
results which the public has long
been long agitating for.

I am
Yours sincerely,
M. Campion

26/13/1892

To the Genl & Revenue
Secretary, Trivandrum

Sir,

In reply to your D.O. No 6747
calling Suggestions regarding the
Separation of the Judicial from the
Executive I have the honor to submit
the following Suggestions viz:-

(1) Dt. Magts - In my own opinion is that
the Subordinate Judge may be
made a Dt. Magistrate, so as
to give full effect to the Separation
of the Judicial from the Executive
But I am cognizant
of various difficulties cropping up
ces also several deficiences. As for
the present to make a beginning
I would even have the Dt. Collectors
to continue as District Magistrates,
provided that successful
Vakils are selected for the
2nd & 3rd class magisterial powers,
and Subjects or Vakils
who have exercised powers

for 3 years as Pr Cap himself are
Selected as Magistrates of Pr Cap
This course is a desideratum
for 2 reasons
(a) Selection from himself would
produce a Bonded produce healthy
+ independent acter.
(b) Having had judicial training
+ being accustomed to turn
out large quantity of good
work, would be competent
to take up ~~cases of~~ criminal
cases of three Jat

(c) It is only this course that would
result in economy

(2) Appointment of Pr Cap himself
or Subordes would lead such
Magistrate to competently
deal with appellate powers
over - ~~and~~ Sub Magis

3 Subdivisional Magis could well
look after Exercise powers
Conferred in Chapters VIII. to XII
Criminal procedure Code -

III/ It is a good idea + a highly
Educative one that Officers
Inspectors ... would be compellable
to exchange their offices that
of a Munsiff + Subjudge vice versa

I am not in favour of Bench
Magistrates

Subdivisional Officers ought to be for
themselves + for various reasons
it is not desirable that they
should be
associated with Subdivisional officers, who
perhaps have much of work
in their own line

V The Govt could well reduce
the number of Assessors after
the above Scheme begins to work

VI The above Scheme helps to work
+ Effect some Saving
+ efficiency + merit not to be the
criterion of selection, Success

VII If Efficiency + merit not to be the
criterion of selection, Success
in money drawn

13/10/916

I beg to remain Sir
Your most obedient
Servant

V. Ramanna

Chamber for Civil Appeals
Madras

NB Subordinate Courts ought not to be
debarred, I am of opinion that not more

than one-fourth of the number of appointments
of magistrates may well be filled up from
~~Selections~~ by Guildar Naiks or
Prakash Naiks who have known civil
law as well & who have with credit
discharged their magisterial
functions -

A. Duncan

Separation of
Judicial from the
Executive

A. Ramaiyar
Member Law Association
Madras.
3/10/1916

B. K. GARUDACHAR

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Bangalore City, 19-10- 1916

10/13/10/16

Dear Sir

As desired by you, I send herewith my views on the several points touched in the note re- Seperation of Judicial from Executive functions received with your D. O Number G. 7497 dated 12th October 1916

Yours
Very truly
M. Gaurudachar

To

The Secretary to Government
Mysore

B. K. GARUDACHAR

Bangalore City, 93 19-10-1916

Separate y Judicial & Executive functions

(1) The need for special qualifications on 400/- to 600/- not apparent to the principle followed in the note, is to have a hierarchy not exercising executive Police functions, no reason is made out for divesting Ministerial powers from many y the Revenue and Treasury assistant Commissioners who have not been exercising Police functions These persons may be continued to exercise Magisterial powers as heretofore and the extra cost proposed could accordingly be reduced.

(2). Special Sub-Registrars are

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are suggested in the note for a place on the bench of magistrates. It is not clear whether they are proposed to be paid any allowance, or honorarium, for this extra work. The statement of cost appearing in the note will have to be revised suitably.

(2) The scale of 200/- to 400/- proposed for special magistrates exercising 2nd class powers appears to be too liberal, as most of the present Amildars magistrates have been exercising 2nd class powers; it would appear sufficient if the scale is fixed at Rs 150/- $\frac{10}{1}$ to Rs 250/-.

(4) ~~xxx~~ proportion of pay of Amildars at present is debited

B. K. GARUDACHAR

Bangalore City, 19/10/1916

to the judicial department
The total amount of pay
so deducted will likewise
have to be deducted from
the total extra cost proposed

(5) If the above considerations pre-
-vail the net extra cost would
be as follows

	Rs-as-p
Pay of 19 special magistrates of 2nd class at 150/- to 250/-	40,600-0-0
Establishments &c do	20,220-0-0
Menial do	6612-0-0
Contingencies do	3000-0-0
Cost of civil buildings in Bangalore, Mysore & K.G. fields	27,387-0-0
Total Rs	= 103,624-0-0
Deduction as noted in paragraph 4 supra	= 22,000-0-0
Net extra cost	= Rs 81,624-0-0

S. R. BALAKRISHNA RAO, B.A., LL.B.,
ADVOCATE.

Mysore
~~SHIMOGA.~~
13. 10. 1916.

96

D... Sir

In reply to your D.no. 3(47-57) 12.10.16
I've the honour to represent the
inconvenience and difficulties
of certain class of officers, I
beg to state the following as my
opinion.

The scheme has embodied
all the various suggestions made
from time to time about this reform. There
can be no doubt that the Dy. Comrs
should continue to be the
Executive Head of the
Dy. Taluq by another

agencies? The first will have
to insure a distinct and
large expenditure money the
loan to be obtained by
a tariff measure? On such
the new system will not have
effect until the question
of finding full employment
for all will have been solved

2 The progress made in
the schemes for disposal
of original approved work
is on a satisfactory nature
So far I could suggest
any further that for facilitating
the grant of remand to
accused persons brought
before the police without delay

S. R. BALAKRISHNA RAO, B.A., LL.B.,
ADVOCATE.
SHIMOGA.

Hon meeting of the
Class may be arranged
Such Taluk Head quarters
where there are no Revenue
Magistrates or Courts
also suggest
Magistrates may be authorised
to hold their Courts
the Taluk Head quarters
alternately.

I may be permitted to
add that in case of
the said magistrates
subjects earlier selection
a wider field of selection
for appointing of pleaders.

4. I would

only add that 99% the scheme mentioned the Govt & [illegible] people would welcome [illegible] was a blessing.

Yours Sincerely

S. R. Balasubramanian

T.

T. E Jayaraman Esqr
B A BL

D.O. No 47.

Camp: Mysore, 13th October 1916.

Dear Sir,

In reply to your letter which I only received last night, re the Separation of Judicial from Executive Functions, I would say in the first place that the appointment of eight first class Magistrates for the Districts in place of the present Assistant Commissioners and first class Magistrates would be totally inadequate to cope with the first class magisterial work, besides putting parties and witnesses to much trouble and inconvenience in large Districts.

The same may be said also of the appointment of second class Magistrates. In my opinion, 19 for the whole of the State would be quite unable to get through all this work.

As this matter will be discussed at the Deputy Commissioners' Meeting, I need not say more now.

18/

The scheme as set forth in the Note is hardly workable and would, I believe, cause very great delay in the disposal of justice.

Yours sincerely,

D.H. Narasinga Rao, Esq., B.A., B.L.,

Secretary to Government

General Department,

Camp Mysore.

CONFIDENTIAL. 4/13/16 Camp Mysore. 102

13th October 1916.

D.O. No. 9

Dear Sir,

In compliance with your Confidential D.O. No. G 74-97 dated the 12th instant, I append hereto a short memo containing my views on the Draft Scheme for the Separation of Judicial and Executive functions sent for my opinion.

Yours sincerely,

V Krishna Rao

T. E. Jayarama Iyer Esq., B.A., B.L.,
Under Secretary to Governmen
Camp Mysore.

MEMO.

2 (ii)

(i) ORIGINAL CRIMINAL WORK:- FIRST CLASS.

I am of opinion that the original criminal work now carri on by the First class Magistrates cannot be done by 8 Special First class Magistrates located at the District Head Quarters, because -

(1) the number is too small to cope efficiently and satisfactorily with the bulk of the work which is now carried on by nearly three times that number.

and (2) great inconvenience will be caused to parties and witnesses by travelling long distances to the Head Quarters.

The existing arrangements in this respect do not seem to me to require any modification as the 1st Class Magistrates at present are practically quite out of touch with the Police in any stage of investigation, since the Police diaries do not pass through their hands and they do not in any other manner concern themselves with the initiation.

(ii) 19 Special 2nd class Magistrates for 2nd & 3rd class cases to be located at the centres tentatively suggested in the Appendix:-

The desirability of divesting the Amildars of their criminal work has been for some time past recognised. But the scheme now proposed will be ineffectual in attaining that object as, in my opinion, 19 Stationary Magistrates will not be able to do the work now done by the large body of Amildars and Deputy Amildars. In my view twice the number is required to do adequate justice to the ever increasing bulk of the criminal cases cognizable by this class of Magistrates. I am still of opinion, already expressed in my D.O. letter No. 696 dated the

28th

28th. May 1916 to the Reveneue Commissioner, that generally speaking, " two taluks may be combined and one Amildar placed in charge of the Revenue and Police work and the other in charge of the magisterial work of the combined taluks." The salary and prospects of the officers of the latter class being the same as that of the former class. Such a scheme will obviate the necessity for any increase of expenditure and may be tentatively tried for a period of two or three years. It will vertually be a seperation of executive and juducial functions in respect of the bulk of the magisterial work of the state.

Benches of Magistrates may be constituted wherever suitable persons are available.

(iv) If it is considered that because the District Magistrate as Deputy Commissioner is the head of the police in the District he should not hear appeals against convictions by 2nd. and 3rd. class Magistrates, such appeals may be heard by such 1st. class Magistrates and Sub-Judges as may be specially empowered to hear appeals.

For ready reference an extract from my D.O.letter NO. 696 dated 28th. May 1916 to the Revenue Commissioner is hereto attached.

As an alternative, the Amildars and Deputy Amildars may by divested altogether of their police instead of their magisterial functions. This scheme will of course involve an improvement of the status and morale of Police Inspectors and their subordinates.

Deputy Commissioner,
Hassan District.

Extract from D.O. letter No. 696 dated 28th May 1916, from Deputy Commissioner of Kadur District to the Revenue Commissioner in Mysore.

" In conclusion, I would also add for consideration the question of separating the Judicial and Executive functions of Amildars in the interests of Revenue Administration. The necessity for this course has long been recognised and action has probably been only delayed by considerations of extra cost to Government which the change would necessarily involve. But I would propose that two Taluks be combined and one Amildar placed in charge of the Revenue and Police work and the other in charge of the Magisterial work of the combined Taluks. Regarding the Taluk Treasuries, each of the Amildars may be in charge of one. Both these Amildars, will, in addition, be in charge of the Maramat, Economic, Municipal and other works of their respective Taluks.

It will not be difficult for an average Amildar to efficiently administer two average Taluks."

E X T R A C T

C.C no 11
enclosure

Office of the Deputy Commissioner,
Shimoga District,
Dated, camp Mysore, the 13th October 1916.

Dear Sir,

I enclose a memo. embodying my views on the note about the separation of Judicial from Executive functions sent with your D.O.No.G. 74-97 of yesterday.

Yours Sincerely,

D.M.Narasinga Rao, Esq., B.A., B.L.,
Secretary to Government,
General Department,
Camp Mysore.

Office of the Deputy Commissioner,
Shimoga District,
Dated, camp Mysore, the 13th October 191

M E M O .

The note goes much further than what is desired. There does not appear to be any demand for divesting Assistant Commissioners of magisterial functions. All that was aimed at was thought to be the withdrawal of the magisterial powers conferred on Amildars. Deputy Collectors and Assistant Collectors in the Madras Presidency exercise magisterial functions within their Revenue Charges and there is no call now for going further in Mysore.

2. As the trial of criminal cases does not leave enough time for the other work of Amildars, I am in favour of their being divested of magisterial functions; but I am not in favour of Special Sub-Registrars being Magistrates as registration work is likely to suffer and inconvenience is likely to be caused to the public. Persons qualified to be Honorary Magistrates are not available even at District Headquarters. It is therefore too early to think of Honorary Magistrates

for

for Taluk Headquarters.

3. In lieu of the proposals for the Shimoga District contained in the note, I would propose the following:-

The Munsiff's Court at Honnali may be re-opened and the Munsiff given jurisdiction over the Channagiri, Honnali and Shikarpur Taluks for the trial of civil and second and third class criminal cases. The Shimoga Munsiff might have similar jurisdiction over the Shimoga and Tirthahalli Taluks and Kumsi Sub-Taluk, and the Sagar Munsiff over the Sagar, Nagar and Sorab Taluks.

All the Amildars may be divested of magisterial powers and the Assistant Commissioners continued as First Class Magistrates.

Deputy Commissioner,
Shimoga District.

CONFIDENTIAL.

D.O. non

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Office of the Deputy Commissioner
Tumkur District,
Dated, Camp Mysore, the 18th October 1916.

Dear Sir,

As required in your D.O. No.G.74-17 dated 12th October 1916, I am forwarding enclosed a note on the question of the separation of Judicial from Executive functions.

Yours sincerely,

T. E. Jayarama Iyer, Esqr., B.A.,B.L.,
Under Secretary to Government,
Revenue Department,

Confer

N O T E.

While I am in sympathy with the idea of separating the purely judicial from the executive, the scheme forwarded with the Secretary's D. O.No.G.74-17 dated 12th October, requires reconsideration for the following among other reasons:-

(1) The city Magistrates of Bangalore and Mysore and the special Magistrate of the Gold-fields have to be kept on; the former two have a full day's work; and the Gold-fields Magistrate is necessary. No savings in cost is, therefore, possible.

(2) There are several Assistant Commissioners now, who have not enough of work; and the scheme will make their work still lighter.

(3) While in some heavy taluks, the Amildars will continue to be heavily worked even without magisterial powers, in more than half the total number, they will also not have full work.

A re-grouping of Taluks and Sub Divisions and a reduction in the number of Amildars and Assistants has therefore to be decided on at once in order that money might not be wasted.

(4) Even a more important objection to the scheme is that by it, the Amildars, who have hitherto been regarded as the back-bone of the administration will suddenly lose in prestige and self-respect. The work that some of these men have turned out under the new scheme is marvellous; and the mejority of them have done good work. All the work done under the Village Improvement Schemes, as well as all the increase in the number of schools, the improvement in agriculture and a large share of the industrial work has been solely due to them or was achieved ~~actuated~~ with their co-operation. If the work done by them is separated, there is very little left; While these men have thus been chiefly instrumental in the achievement of results during the last four years, it will be cruel to make them loose heart

heart by suddenly putting above them in pay and status a set of other men - probably recruited from the vakils- for doing second class magisterial work; that they had hitherto been doing. What is required is that the pay of the Amildars (or the officers who are to take their place) should also be raised to the same scale as that of Munsiffs and second class magistrates i.e. from Rs. 200/- to Rs. 400/- and the number considerably reduced.

It is well known that the shekdars have done practically nothing as regards the new activities, and are steadily going down in public estimation; unless the Amildars pay and status are raised he will soon become a magnified shekdar and equally useless. The Tahasildar in British India is also the incometax collector and hence has prestige , and in Madras has considerable powers in Land-revenue matters. We have also to consider

3 We have also to consider the large question , wheather the preventive powers should also not be entrusted to them- only those honest and capable being selected or in otherwords, wheather the area of four or five Taluks is not too large for a magistrate. Some of the objections to the present system amount to objection to discipline - to any one at all having a whip; and such objections require no consideration. It is necessary at present that the chief executive officer and the leader of activities should also be the Police magistrate, responsible for peace and should take precedence within his area over the special second class magistrate. The scheme has also to be considered in the light of the improvements proposed as regards Local self Government.

4 Perhaps what would cause least change would probably be somewhat as follows :-

For revenue collection in each Taluk (re-grouped, if necessary) and (for some time) as Head of Police, it is sufficient to have an officer on Rs.100 or 150 or even Rs.100 & 120. For every two or three Taluks, there should be a higher officer; the latter would be the boss for that area - the head (for

(for a long time) of the self Governing ~~limit~~ unit, the leader of Economic and other activities, and the Police Magistrate responsible for peace. For the same area there will be a 2nd class Magistrate; and also 1st class Magistrates, one for each District who will be purely judicial officers. A considerable portion - say half at least of the higher Revenue Officers and Magistrates should be recruited from the present set of Amildars.

This would amount in effect to the status of the inferior Amildars being further reduced, and that of the better men raised. It is a waste of power to have a competant man on Rs.200 or 250 do all the work with another on 250 to 450 to go over the same ground, as is done at present.

With these changes, it might be possible to bring in the new scheme without much extra cost.

The points to be remembered in whatever scheme is adopted are that the area of the preventive Magistrate should not be too large, that the leader of activities should in the beginning be also the man responsible for peace; and that the men who have done all the work should not be cast aside.

K. Chaudry
Deputy Commissioner
Turnkur District

13.10.16

kkr

EXCISE COMMISSIONER,
I. G. OF REGISTRATION,
COMMISSIONER OF STAMPS,
& REGISTRAR OF JOINT STOCK COMPANIES
IN MYSORE.

Camp Kengeri BANGALORE 13.10.16.

Dear Jayaram Iyer.

Refee :- Yesterday's D.O. letter No — G.74-97 of yesterday's date marked "confidential" with Enclosure.

Assuming that an Expression of my views in the matter is required only so far as it relates to the Employment of "duly qualified Special Sub-Registrars as Bench Magistrates I write to say that while I am not in favour of Special Registrars being

invested with Magisterial powers generally, particularly in view of the low scale of pay prevailing at present, I have still no objection to their services being utilised as Bench Magistrates in places where the amount of their legitimate work is such as not to preclude any such arrangement being effected. Such this is best tried as an experimental measure to begin with for

Can such ab ade sure that

an arrangement will be found

a fully satisfactory one

Yours Sincerely

P. Rajagopalan

CONFIDENTIAL

OFFICE OF THE
INSPECTOR GENERAL OF POLICE IN MYSORE.

Camp Mysore. 13th Oct 1916

Dear Narasimhachar,

With reference to your letter No.G.74-97 dated yesterday, asking my opinion on the draft scheme for the separation of judicial from executive functions, I send enclosed a short Note embodying my views thereon.

Yours sincerely,
Sd/- K. V. Krishnamurthy

113/wf/16

Confidential

N O T E

The draft scheme now circulated for the separation of judicial from executive functions in the State does not seem to be practicable, as we want more magistrates than we have at present, the chief reason therefor being the inconvenience to the public. As it is, some of our courts are not within easy reach of the villages, and with the still further reduction in the number of courts, there will be greater cause for complain of adjournments etc, with all their attendant demoralizing effects. The worry and annoyance due to long journeys to courts, frequent adjournments, interruption of the work of the village folk, not to speak of the expenses and various drains on their energies involved, long absences from their homes, an other incidental inconveniences etc, will not tend to efficien administration, but on the contrary far outweigh the somewhat problematic advantages sought to be achieved.

Sikandar Hyat

13/10/16

OFFICE OF THE REVENUE COMMISSIONER
IN MYSORE.

Camp: Mysore,
Bangalore, 13th October 19

14/13/10/11

Dear sir,

In reply to your D.O. No. G.74-97 dated the 12th instant, I beg to send herewith extracts from certain contributions to the Police Commission of 1904 and also my views of the note received with the D.O. under reply.

Yours truly

T.E. Jeyarama Iyer Esq., B.A.,B.L.,
Under Secretary to Government,
General Department.

Extracts.

An Amildar's first concern is the well-being of the ryot. He is not a mere Collector of Revenues or a report-writing machine. Not infrequently is he called upon to play the role of an unofficial adviser to the people in some of their immediate and intimate concerns. In order to be sought for help, consolation or advice he should be able to impress the people with confidence in his broad-minded sympathy and uprightness. As much of his success as a Taluk Administrator would depend upon how he impresses the public mind, he may not permit himself any vagaries that might detract from his good name - at least not to a fraction of the extent to which a Police Inspector or a Sub Magistrate can and may.

The questions raised are of the gravest importance but they had been raised before and failed to convince Government of the benefits of the change. One has only to step across the border to see what an important personage a small Police Constable is in the Madras villages. It is notorious that that importance is not gained by any prominent feature of honesty or good conscience in the constable. I was some 8 years in a District with an extensive Madras frontier and can claim to speak with some authority on the subject.

No doubt the cry everywhere is for a separation of the kind suggested by the Inspector General but that cry and the reason for it have to be carefully considered. It is urged that "it is incumbent on a Government which prides itself on being in the forefront of enlightenment and progress to carry out reforms which have been in operation for 40 years in British India and which at no additional cost to the State will bring the Mysore Police Administration into line with that of the British Provinces". But we are there already - in the forefront ! With a Police Administration upon a totally different basis obtaining in Madras side by side with ours why was it that we did not follow Madras if a real reform it was, so to do. It was not that our Government did not consider the Madras system in its various aspects or were apathetic towards introducing a wholesome reform in a department so intimately concerned i

helping the magistracy to uphold the law of the land and assure the peace and happiness of the country. If we adhered to our system it was because we were not convinced of the benefits of the other. It must ever remain an amazing anomaly that a body of men who owe their very existence to the Code of Criminal Procedure and are in every sense of the term the servants of the magistracy to the total exclusion of other masters in the discharge of their duties under that Code, should have to look to those other masters for approbation or censure in the discharge of those duties. This dual control exists to a less extent in Mysore than in the British Provinces by reason of the Police functions of our Deputy Commissioners and Amildars. The cause of "enlightenment and progress" would point to a further lessening of the dual control by a transfer to the magistracy of the powers now exercised by persons outside that body ! The preventive and punitive functions of the Magistrate would then be better exercised. A system which has worked well through successive years and stood the test of time showing year in and year out that it secured best the happiness of our people may be safely relied upon to work equally satisfactory and to the same result in succeeding years.

Referring to the other closely allied question I am at one with all those who held that justice pure and true should alone emanate from the seat of Judgment and that the laws of thought and inference which have been enacted to secure that end should be held sacred and inviolable. A judge's mind should be kept free from all bias, from all information that might be coming in other ways than are enjoined by the laws of Judicial Evidence. These principles are in no way interfered with by our system of Police Administration for, a District Magistrate or a Taluk Magistrate who has had to do with a case on the Police side need never try it himself; and he does not: We have a sufficiently large number of other Magistrates in a District. Where then lurks the darkness and whence the need for the light to dissipate it ?

It is said that the change of system now advocated has been found to work excellently in Madras but this argument does not prove that our system has not worked equally execellently in Mysore !

The point now before us is indeed trivial compared to some essential details in the principle and procedure of Police Administration in which we vary from Madras. We are all the better for it and our people happier.

Revenue Commissioner's note. ——— o ———

The above are extracts from certain contributions to the Police Commission which sat in Bangalore in 1904 under the Presidency of Mr. Justice A. Rangaswami Iyengar. The question then was whether the Amildar should not be divested of his Police functions. After considering able opinions from all sides, it was resolved that no change was necessary and that it was best to leave well alone.

If however the Amildar is to be divested of either the Police or the magisterial functions, let him be divested of his Police functions. He must continue as a Magistrate as he will be much safer than a small sub-magistrate. Every taluk should have a Deputy Amildar in view of the amazing increase of work that has accrued. The Deputy Amildar should be a magistrate of the 3rd class and the Amildar a magistrate of the 2nd class.

Assistant Commissioners have no Police functions.

The Deputy Commissioner should also be the District Magistrate. The Treasury Assistant Commissioner should always be a first class magistrate. The present practice of putting junior officers in charge of the District Treasuries must cease, for the Treasury Assistant Commissioner should be an officer of some rank and experience able to attend to the Deputy Commissioner's work in his absence and be invested with appellate powers.

I do not agree with the note received from the Secretariate. If it is adopted, a good deal of travelling for the parties, witnesses and the Police as well as delays in the disposal of cases will result. Criminal justice will become as dilatory and costly as

Year CC N° 55 Enc 1

Confidential.

Camp Mysore.

13th October 1916.

Dear sir,

With reference to your D. O. No.574-97 dated 12th instant, I beg to enclose herein a memo containing my views on the question of "the separation of Judicial from Executive Functions."

Yours sincerely,

C Balasundaram

To

T. E. Jayarama Iyer Esquire B.A.,B.L.,
Under Secretary to Government,
Camp Mysore.

(8) In addition to accommodation for the Courts, Lockup accommodation will have to be largely increased at the Court stations.

(9) Under the proposed scheme Assistant Commissioners will cease to do magisterial work and when they rise to be Deputy Commissioners and District Magistrates they may be found lacking in experience.

(10) The scale of pay proposed for the 2nd class Magistrates viz Rs. 200 to 400 is much higher than the scale of pay of Amildars and this disparity is sure to lower the estimation of the Amildars in the eyes of the public in comparison with the new Magistrates and largely impairs their usefulness in several activities.

4. I would suggest the following modifications in the scheme:-

(i) Assistant Commissioners may continue to be 1st Class Magistrates in fact as well as in name.

(ii) The new Magistrates may try 2nd and 3rd class cases and after they acquire experience they may be made 1st class Magistrates.

(iii) The number of such Magistrates should be increased so as to provide one Court for every two Taluks or at the most one for every three Taluks, so that parties and witnesses may not have to travel long distances.

(iv) The Amildars may retain magisterial powers and exercise powers @ under the preventive Chapters of Criminal Procedure Code so that there may be a local Officer easily available on emergent occasions.

(v) As regards recruitment, it would be well if the proposed magistracy is recruited from duly qualified Amildars and Assistant Commissioners and is not confined to Munsiffs alone.

Dy Commissioner
Chalakudy

M. RAMACHANDRA RAO SINDIA,
MERCHANT & CONTRACTOR.

Camp: Mysore
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BANGALORE CITY,

Dated, 13: 10: 1916

T. E. Jayaram Iyer Esqr
Asst Secretary
Govt of Mysore

Sir,

I beg to acknowledge the receipt of your letter dated 12th inst and the note regarding the scheme to seperate the judicial from Executive function and to state that this is a long felt want

I have nothing to suggest and wish the scheme might take effect as early as possible.

I beg to remain
Sir
your most obedient
M Ramachandra Rao Sindia

KARNICK KRISHNAMURTI RAO
MAGADI ZAMINDAR,
MEMBER OF THE MYSORE LEGISLATIVE COUNCIL

BASAVANGUDI,
BANGALORE CITY,

13 [illegible] 1916.

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To

D. M. Narasinga Rao Esqr. B.A., B.L.,
General Secretary to Government of
Mysore
(Camp Mysore).

Sir,

I beg to submit the following views on the question of separation of Judicial and Executive functions which, I hope, to be acceptable.

Deputy Commissioners must continue as District Magistrates to carry on the District administration effectually and efficiently. For the disposal of original criminal work, Government propose to appoint 8 special first class Magistrates and 19 Special second class Magistrates to be located in convenient centres. They will probably be subordinates of District Magistrates who are again executive Officers. They area for each first class Magistrate will be too large and crime will be suppressed easily. Criminal justice should be cheap quickly and efficient. I suggest the appointment of a Municipal Magistrat

RNICK KRISHNAMURTI RAO
MAGADI ZAMINDAR,
MEMBER OF THE MYSORE LEGISLATIVE COUNCIL

BASAVANGUDI,
BANGALORE CITY

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in each Taluk head-quarter to try origin
revenue cases, civil and criminal cases
as well. If it is considered costly, two
Taluks may be grouped together and a
Munsiff should be appointed for that group.
They must have second class powers. At
every District head-quarters a Sub-Judge
with first class powers to hear appeals
against convictions of second and third
class Magistrates should be appointed.
They must be direct subordinates of Distric
Judges. They must be Officers of approved
merit unblemished character and service

Bench of Magistrates in every
Taluk to dispose of petty cases may be
formed but a Sub-Registrar should have
no place on it.

The question is important and I
earnestly suggest the appointment of a
committee to go through the question. The
Amildars should have no magisterial
powers, but may continue as heads of Police

I beg to remain,
Sir
Your most obedient servant

Camp Mysore,

4th October 1916.

Dear Sir,

I thank you for your D.O. No. G74-97 of 12th October 1916 which I had yesterday afternoon. The Scheme suggested in the note accompanying your D.O. for the "separation of Judicial and Executive functions" seems to be generally sound and practicable. I am clearly of opinion that no serious difficulties are likely to appear in the working of the Scheme.

A ~~suitable~~ substantial measure of relief may probably be given to the Special First Class Magistrates contemplated under the scheme by making other arrangements for enquiry into cases committable to the Sessions. This will enable them to hear all appeals themselves. The appellate powers of District Magistrates reserved under the scheme should at all events be exercised only in special cases where it is absolutely necessary to give relief to the First Class Magistrates.

The constitution of Benches of Magistrates wherever practicable would indeed be a step in the right direction. It will probably be safer to confine them to the trial of Third Class cases in the first instance. With enlarged experience it should be easy to widen their jurisdiction. I must confess however that the proposal to associate Sub Registrars with them does not appeal to me.

The salaries proposed for the new officers are adequate and their incorporation in the Judicial

ervice

service is sound. A reasonable measure of interchange of officers between the two branches will afford an amount of variety to the work which will be refreshing At the same time the discipline of Civil work will considerably enhanced individual efficiency.

The opportunity for advancement for Munsiffs and Second Class Magistrates will perhaps be deemed adequate. It is to be feared however that there may be serious blocks in the promotion of First Class Magistrates and Sub Judges. When a block in promotion such as is referred to occurs, it may be relieved either by special allowances or suitable alterations in the time scale.

The financial implications of the scheme are not fully elucidated in the note. But I take it that a substantial increase in expenditure will result But this must be squarely faced in the interests of a measure of reform so long overdue.

I observe that a Second Class Magistrate's Court is located at Channarayapatna in the Hassan Dt. Hole Narsipur will probably be more convenient. Arsikere will be connected with Hole Narsipur by railway in a few months. Arkalgud will never remain remote from Channarayapatna. The unbridged river Hemavati between Channarayapatna and Narsipur will during the rains be found to be a very convenient excuse by parties and witnesses desirous of delaying a decision.

I have offered these observations as they occurred in the brief time available to me. The ----

scheme

The scheme carries out effectively the more urgent need of divesting the Amildars and Assistant Commissioners of Magisterial functions. It is a matter for satisfaction that the divestment of the Amildar is complete. While recognising the greater importance in principle of the separation of the functions of the District Magistrates from the executive, I am of opinion that the scheme meets the more urgent need in the lower grades and should be given effect to promptly.

Yours sincerely,

Advocate,
Hassan
Camp Mysore

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Mysore
13th Oct '16.

D. M. Narasinga Rao Esquire B.A. B.L.
General Secretary to the Goverment of Mysore
Camp: Mysore

Dear Sir,

I have read through the scheme. It has seve good points, though it does not go so far as we have bee urging. Yet as beginning it may be introduced at on and improved in the light of Experience,

I remain
Dear Sir
Yours Sincerely
[illegible]

D.O. No 22 En one.

24/10/16

Office of the Deputy Commissioner,
Kadur District,
Camp Mysore, 13th October 1916.

Dear Sir,

With reference to your D.O. letter No. G. 74-97 dated 12th instant, I enclose herein a note containing my opinion on the scheme suggested for the separation of executive and judicial functions.

Yours sincerely,

D. Ramachandra

D.M. Narasinga Rao, Esquire, B.A.,B.L.,
Secretary to Government, General Depart.
Camp M Y S O R E

Office of the Deputy Commissioner,

Kadur District,

Camp Mysore, Dated 13th October 1916.

N O T E.

The suggested scheme will, while giving effect to the separation of Judicial and Executive functions, also give considerable relief to the Assistant Commissioners and Amildars and enable them to devote more attention to their revenue and other miscellaneous work connected with the many activities requiring their attention.

The following points of inconvenience and drawbacks of the scheme, however, require to be considered:-

(1) As there will be only one First Class Magistrate for a District, difficulty may arise, when it is found necessary to transfer a case from his court for any reasons. The case will have to be transferred to a different District, and orders for this will have to be sought only in the Chief Court.

(2) As regards Second Class Magistrates, giving one such Magistrate ~~and~~ to three or four Taluks as grouped in

the Appendix is likely to cause much public inconevenience owing to distance etc. To avoid such inconvenience, not more than two Taluks should, it seems to me, be clubbed together.

(3). Some of the Magisterial functions relating to the prevention of offences described in chapetrs VIIII to XII of the Criminal Procedure Code, such as temporary orders in urgent cases &c, are exercisable by Magistrates of all classes. If Amildars are deprived of such powers serious results may at times ensue, owing to the large area of jurisdiction of the proposed Second Class Magistrates and the distances involved &c.

(4) With regard to the cost as detailed in para VI of the Note, some additional items will have to be included, Viz., separate Court Buildings and additional Lock-Up buildings &c. at the Second Class Magistrate's Head Quarters, and the additional Police Staff that may be required.

(5). The proposed Special Magistrates, being engaged on purely criminal work, will want the experience and qualifications required for the higher posts of either District

Judges in the Judicial Department or Deputy Commissioners and District Magistrates in the Revenue Department. It is proposed to place them in the Judicial Department, but they will have no civil work to do at all to qualify them for higher posts in that Department.

Having regard to all ~~such~~ circumstances, it seems doubtful whether the proposed scheme will satisfy fully the requirements of public administration or advance public convenience to any extent.

P Ramaswamy

wr 15/10/11

NOTE ON THE QUESTION OF "THE SEPARATION OF JUDICIAL FROM EXECUTIVE FUNCTIONS".

---oOo---

I believe that the chief arguments which could be urged in support of the proposal for divesting the -- Revenue Officers(Assistant Commissioners and Amildars) of their magisterial powers are:-

(i). That Magistrates like Civil Judges, require special training in law and that the Revenue Officers have generally not got such training.

(ii). That a Magistrate should not, on principle, be allowed to try cases in the investigation of which he had interested himself as a Police Officer

(iii). That the Revenue Officers are unable to give attemtion to their multifarious Revenue and other duties without prejudice to their magisterial work.

2. As regards(i), I do not think that there is much force in this argument, as the Revenue Officers have to qualify themselves in Criminal Law before they are invested with magisterial powers and are expected to (and, with perhaps rare exceptions, generally do)keep themselves posted up with the latest rulings and decisions in criminal cases. Experience has shown that the Revenue Magistrates have not been found to be in any way inferior, as such, to Judicial Officers exercising magisterial powers; and there is nothing surprising in this, for the essential qualifications required on the part of a magistrate are sound common sense and a capacity to correctly appreciate evidence; and these are certainly not the monopoly of Judicial Officers alone. On the other hand, the Revenue Officer by his more intimate contact with and knowledge of the people among whom he is placed is more qualified to appreciate the evidence placed before him than a purely Judicial Offic

Officer.

3. As regards the 2nd ground, it must be readily conceded that there is great force in it; but while it is applicable to the Amildars, it, in no way, applies to the Assistant Commissioners who have no police functions [illegible] and have nothing to do with the police investigation of cases.

4. As regards the 3rd argument, there is no doubt that, at present, the Revenue Officers with the multifarious duties they have to perform, are heavily overworked and I would therefore heartily welcome any proposal to give them relief, provided it is not against public interests and does not tend to weaken the efficiency of the administration. I fear, however, that if the Revenue Officers are deprived of their magisterial powers, it will result in rendering them absolutely powerless to exercise any influence over the public, and to carry out the various beneficient measures - such as the Village Improvement Scheme etc., - undertaken by Government for the good of the people. It is not that the Revenue Officers have to make use of their [illegible] powers as Magistrates for carrying out these measures; but the mere fact that they have these powers gives them a certain amount of prestige, without which no one would care to notice them or pay heed to their advice.

5. I do not think that in deciding the question of the separation of Judicial and Executive functions, there is much use in comparing our system with that prevailing in some one or other of the advanced countries of the world. Each country has to adopt the system best suited to its condition; and what is most fitted for a highly advanced country where the people know their rights

rights and responsibilities and do not need the guidance of the officials, will not be suitable for a State like ours, where the people look to the Government and their administrative officers for help and guidance for ~~[illegible]~~ everything.

6. The cry for the separation of the Executive and -- Judicial functions here has been apparently taken up by some of our public men from British India. But while, in British India, there is a certain amount of justification for it owing to the higher officers of Government not being in touch with the people, there is absolutely none whatever for it in Mysore, where every officer, down from the very highest, moves freely and familiarly with the people and keeps a careful watch on the vagaries of the subordinates in every Department.

7. Having made the above general observations on the principles involved in the scheme, I now note below some of the chief objections to the proposed scheme:-

(i). It is proposed to have only one special first class Magistrate for each District and to absorb the City Magistrates of Bangalore and Mysore and the -- Special Magistrate of the Kolar Gold Fields in the new scheme. It will be impossible for one first class Magistrate to attend to all the first class cases in the Bangalore District as well as the City; and I think the retention of the City Magistrate will be quite necessary at Bangalore, (and I believe also at Mysore and the Kolar Gold Fields).

(ii). If there is to be only one first class Magistrate for each District, considerable difficulty will be experienced when cases have to be transferred from one court to another. The cases will have

to go to another District and this will mean a great deal of inconvenience, trouble and expense to the -- public as well as to the Government and their officers.

(iii). It is proposed have only 2 special Second clas Magistrates for each District. This will mean that for every case, however trivial - for instance, ~~for instance~~, for every petty prosecution under the Village Sanitation or the Police Rules - the Government officers of the Department concerned and the parties and winesses will have to go a long distance to a different Taluk. The amount of public inconvenience and expense which this will entail can easily be -- imagined. Under this arrangement, a good portion of the time of the Sanitary Inspectors and Police and other Officers will be taken up in travelling to and from the Court for instituting and conducting prosecution; and they would find very little time to -- attend to their ordinary duties.

(iv). Unless there is a Magistrate in each Taluk, the Police will have to go long distances even to obtain remands for the detention of the accused in their custody.

(v) Serious troubles might be caused on occasions of apprehended riot or breach of the peace in the absence of a Magistrate on the spot.

(vi). A good deal of time of the Police will be taken up in escorting persons to and from the Court and this will necessitate an addition to the Police force.

(vii). Considering the present pay and status of the Sub-Registrars it will be quite unsafe to invest them with magisterial powers.

(viii).The reasons given for including the proposed special Magistrates in the Judicial service do not appear to be convincing. If, on the one hand, it tends to make available for higher judicial appointments, officers trained in both civil and criminal work, on the other hand, it will result in the -- appointment, as District Magistrates, of officers having no experience and training whatever in the criminal work.

The above are some of the chief objections to the scheme which have suggested themselves to me. I may say that I have discussed the question with some of the -- leading Dasara Representative Assembly members and lawyers and I have been given to understand that what they particularly want is not so much a complete separation of Executive and Judicial Functions as a separation of Magisterial and Police functions in the Amildar. They find no inconvenience in, and have no objection to, the Assistant Commissioners exercising magisterial powers; but only require that the Amildars should not be allowed to try Police cases. It is true that, at present, no Amildar with any sense of duty tries Police cases in the investigation of which he has taken any part or interest, and that in all such cases, either the Amildar himself or the party applies to the District Magistrate for a transfer of the case to another court. But as it is left to the discretion of the District Magistrate to accept or reject the application, it is no doubt desirable that it should be made impossible for the Amildar to try such cases under any circumstances.

9. After giving the matter my best consideration, I am of opinion that the best course will be, not to

to divest the Amildars of their magisterial power but to relieve them of their Police duties by making the Police Inspector directly subordinate to the Superintendent, the pay and status of the Police Inspector being suitably raised for this purpose. Besides, a few special Magistrates may be also appointed to afford relief to the Amildars in Taluks, in which the Revenue and Magisterial work is too heavy for a single officer to cope with satisfactorily.

10. If, however, the proposal to relieve the Amildars of their Police powers does not meet with favour, I would make the following suggestions:-

(i). Special 2nd class Magistrates to be appointed for each District at the rate of one for every two Taluks, their status, rank and pay being the same as that of the Amildars.

(NOTE. If in any place the special Magistrate has not got sufficient magisterial work, it should e easy to find him other additional work in these ays of increased activities).

ii). The Amildar to retain his magisterial power but not to try Police cases or any other cases -- other than those that may be specially referred to him by the District Magistrate.

(iii). The Assistant Commissioners to retain their Magisterial powers as at present.

(iv). Benches of Magistrates to be constituted in places, where competent men are available for it.

(v). Relief to be afforded to the Assistant Commissioners by the appointment of Honorary 1st class Magistrates wherever possible. There are many retired Officers of Government (Assistant Commissioners and higher Officers), who are quite competent to exercise such powers and who would be quite willing to undertake the work in an honorary capacity;

capacity; and it will be to the best interests of the public to utilize the services of such persons instead of allowing their talents and experience to go to waste.

CHIEF COURT OF MYSORE,
BANGALORE.
Dated 16th October '16.

Dear sir

I regret that owing to the nature of the subject and the pressure of other work at Mysore it was impossible for me to give a reply to your letter of the 12th Instant by the evening of the following day.

The scheme suggested seems to me to be suitable and better than the multiplication of munsiff magistrates.

The object aimed at, if I understand the matter rightly, is to secure that the trial of offences shall be entrusted to tribunals entirely independent of the police organization. But there are duties entrusted to magistrates under the Code of Criminal Procedure which are of an executive rather than of a judicial character: the prevention of offences falls outside the functions of a tribunal for the trial of offenders,

and

this

and it may be desirable to maintain in the hands of Revenue officers some magisterial powers which are not of a judicial nature and which may require exercise in an emergency. I may instance the powers given to magistrates by Chapters IX, X and XI of the Code of Criminal Procedure.

And in some other cases such as the issue of search warrants, and the making of remand orders it might be desirable to have recourse to a magistrate close at hand; the search warrants could be returnable, and the remanded accused could be producible, before a magistrate having jurisdiction to try the offence the order being made on the lines of those provided for by section 108(3) and 167(2)

For these and similar purposes it may be desirable to retain the present magistrates or some of them, depriving them only of the powers of holding enquiries and trials.

The strength of the staff and its distribution are, so far as I can judge without further study of

the

the statistics, sufficient and suitable, and the pay is adequate, but not excessive when it is considered that higher posts in the department are very few in number.

As the appointment of both classes of magistrates will be in the Government or the Chief Court, and not in the District Magistrate the principal objection to the Stationary Sub Magistrates of the Madras Presidency will be obviated, and we may be able to get men well qualified to deal with judicial questions and not mere senior clerks.

The qualifications should be those prescribed for a munsiff.

I imagine it [illegible] that though the cost of the scheme may seem heavy, there may be a good deal of saving effected by reductions in the Revenue Department.

There

There may no doubt be occasion for revision of the scheme in detail, but in my opinion it is a good scheme, and one which the Government would be well advised to adopt.

Yours sincerely,

CHIEF JUDGE.

To

D.M. Narasinga Rao, Esq., B.A., B.L.,
Secretary to the Govt: of Mysore,
General Department.

1106

A.S III wants the needful Hearth- the K.C. Order

11/7

Public Office, 11th July 17

Dear Sir Lawrence

I send herewith the letter to our Ambassador at Petrograd from the Secretary of State for Foreign Affairs, and I should be glad if you would kindly let me have a telegram in cipher as soon as possible.

I am arranging for the Secretary of State for Foreign Affairs to see the Russian Ambassador at 5.30 this afternoon, and I should be glad to know whether the telegram has been sent.

Yours sincerely,